



Lake Park Town Commission, Florida

Regular Commission Meeting

Commission Chamber, Town Hall, 535 Park Avenue, Lake Park, FL 33403

Wednesday, May 15, 2024 at 6:30 pm

Roger Michaud-
Kimberly Glas-Castro-
Michael Hensley-
Mary Beth Taylor-
Judith Thomas-
John D'Agostino-
Brett Lashley-
Laura Weidgans-

Mayor
Vice Mayor
Commissioner
Commissioner
Commissioner
Town Manager
Town Attorney
Deputy Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contract the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.

CALL TO ORDER/ROLL CALL

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATION/REPORT:

1. Legislative Update by Senator Powell
2. Proclamation Declaring May 19, 2024, through May 25, 2024, as National Public Works Week in the Town of Lake Park, Florida
3. Proclamation Declaring May 2024 as National Cities, Towns and Villages Month

PUBLIC COMMENT:

This time is provided for addressing items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember comments are limited to a TOTAL of three minutes.

TOWN ATTORNEY, TOWN MANAGER, COMMISSIONER COMMENTS:

CONSENT AGENDA:

All matters listed under this item are considered routine and action will be taken by one motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda. Any person wishing to speak on an agenda item is asked to complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

- [4.](#) May 1, 2024 Public, Private Partnership (P3) Workshop Minutes
- [5.](#) May 1, 2024 Regular Commission Meeting Minutes
- [6.](#) Resolution 26-05-24 Authorizing and Directing the Mayor to Execute a Construction Services Agreement Between the Town of Lake Park and Mangonia Construction Group, LLC for the W. Ilex Park Phase 2 Park Improvements.
- [7.](#) Resolution 27-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement Between the Town of Lake Park and Baxter & Woodman, Inc. for the Provision of Continuing Professional Services on an As-needed Basis.
- [8.](#) Resolution 28-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Calvin Giordano & Associates, Inc. for the Provision of Continuing Professional Services on an As-needed Basis.
- [9.](#) Resolution 29-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and The Engenuity Group for the provision of Continuing Professional Services on an As-needed Basis.
- [10.](#) Resolution 30-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement Between the Town of Lake Park and Florida Technical Consultants, LLC for the Provision of Continuing Professional Services on an As-needed Basis.

- [11.](#) Resolution 31-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement Between the Town of Lake Park and J Morton Planners for the provision of Continuing Professional Services on an As-needed Basis.
- [12.](#) Resolution 32-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement Between the Town of Lake Park and Keshavarz & Associates, Inc. for the Provision of Continuing Professional Services on an As-needed Basis.
- [13.](#) Resolution 33-05-24 Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement Between the Town of Lake Park and Kimley-Horn and Associates, Inc. for the Provision of Continuing Professional Services on an As-needed Basis.

QUASI-JUDICIAL PUBLIC HEARING (RESOLUTION): NONE

PUBLIC HEARING(S) - ORDINANCE ON FIRST READING: NONE

PUBLIC HEARING(S) - ORDINANCE ON SECOND READING:

- [14.](#) Ordinance 05-2024 Amending Chapter 54, Article I, Section 54-8 of the Town Code Pertaining to the Town's Local Amendments to Chapter One of the Florida Building Code.

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE I, SECTION 54-8 OF THE TOWN CODE PERTAINING TO THE TOWN'S LOCAL AMENDMENTS TO CHAPTER ONE OF THE FLORIDA BUILDING CODE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT ; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

OLD BUSINESS: NONE

NEW BUSINESS:

- [15.](#) Resolution 22-04-24 Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Boat Storage, LLC for the Boat Storage Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina.

- [16.](#) Resolution 34-05-24 Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Marina, LLC for the Public Marina Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina
- [17.](#) Resolution 35-05-24 Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Restaurant, LLC for the Marina Restaurant Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina
- [18.](#) Red, White & Blue Sunset Celebration Event Discussion

REQUEST FOR FUTURE AGENDA ITEMS:

ADJOURNMENT:

FUTURE MEETING DATE: Next Scheduled Regular Commission Meeting will be held on June 5, 2024.

Agenda Request Form

Agenda Item No.

<input checked="" type="checkbox"/>	SPECIAL PRESENTATION/REPORTS	<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	BOARD APPOINTMENT	<input type="checkbox"/>	OLD BUSINESS
<input type="checkbox"/>	PUBLIC HEARING	ORDINANCE ON _____	READING
<input type="checkbox"/>	NEW BUSINESS		
<input type="checkbox"/>	OTHER: _____		

Digitally signed by John D'Agostino
DN: cn=John D'Agostino, o=Town
of Lake Park, ou=Town Manager,
email=jdagostino@lakeparkflorida
gov, c=US
Date: 2024.02.28 16:56:28 -05'00'

Date: _____

Name/Title

Originating Department: <p style="text-align: center;">Town Clerk</p>	Costs: \$ 0.00 Funding Source: Acct. # <input type="checkbox"/> Finance _____	Attachments: <ul style="list-style-type: none"> • None
Advertised: Date: _____ Paper: _____ [X] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone or Not applicable in this case LW. Please initial one.

Recommended Motion: No motion needed.



2024 LEGISLATIVE SESSION REVIEW

THE HONORABLE SENATOR
BOBBY POWELL JR., AICP



**BOBBY
POWELL**



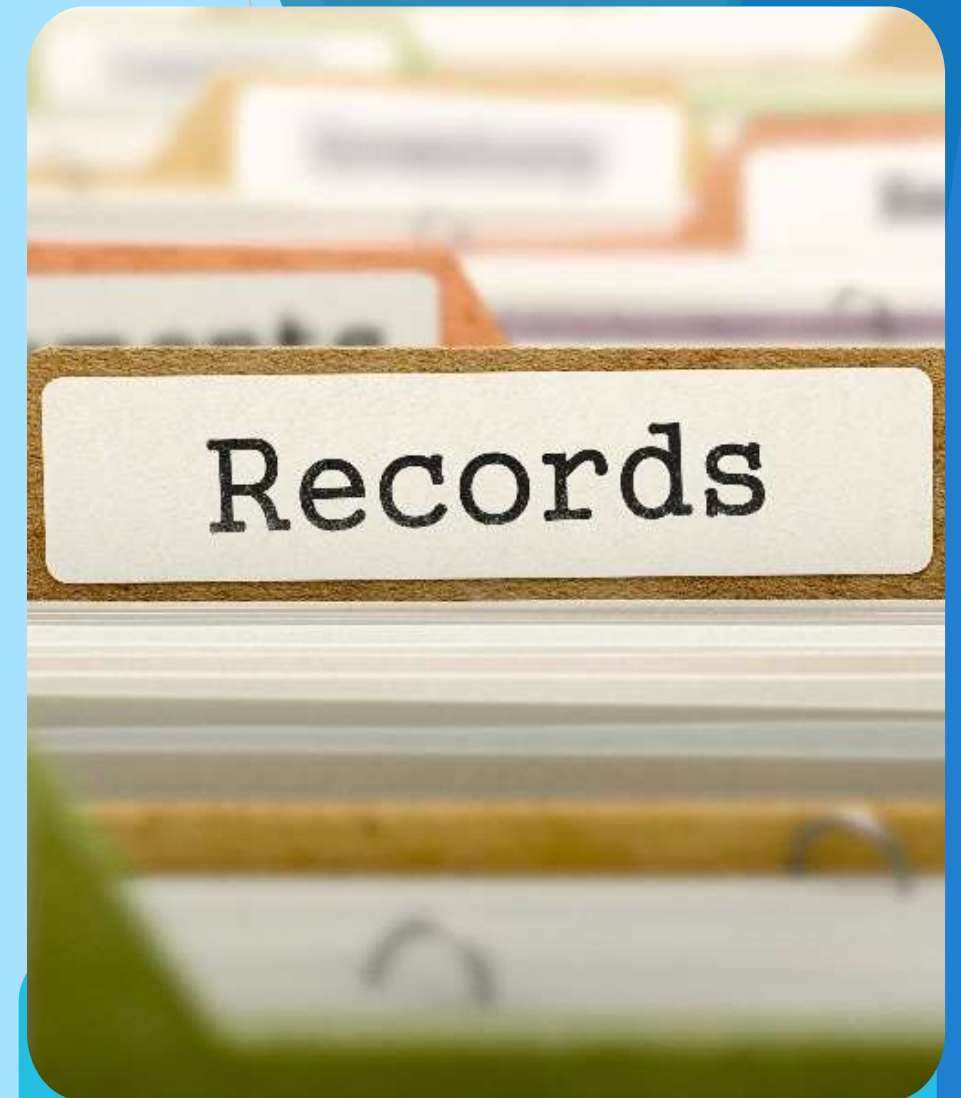
Powell Bills Passed

SB 712 Public Records/County Attorneys and City Attorneys

This bill provides an exemption from public records requirements for the personal identifying and location of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, deputy city attorneys, and assistant city attorneys.

Personal Information relating to their spouses and children is likewise exempt. The specific personal information made exempt from public records disclosure requirements include:

- Home Address, telephone numbers, places of employment, photographs, and dates of birth.
- Names, home addresses, telephone numbers, photographs, places of employment, and dates of birth of the spouse and children.
- Names and locations of schools and day care facilities by the children.



Powell Bills Passed

Item 1.

SB 1064 Wills and Estates

Provides and clarifies procedures to resolve probate disputes regarding property owned by spouses in this state but acquired while the spouses lived in one of the nine community property states.

Amends and repeals various provisions of the Act, and other related provisions of the Florida Probate Code, to:

- Clarify existing law by exempting title disputes arising under the Act from: The term “claim” as defined in the Florida Probate Code.

The bill ensures the availability of necessary information about deceased individuals is contained in the land records maintained by the Clerks of the Circuit Courts so that proper heirs can be identified in the chain of title, thereby protecting the public interest of certainty in the ownership of real property.



**BOBBY
POWELL**

Bills Introduced-**Stopped** in the House

Item 1.

SB 732 Theft from Nonprofit Organizations

This bill would have required a person who is convicted of theft of more than \$1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization.

If the funds, assets, or property involved in the theft is valued at:

- \$50,000 or more, the offender commits a first degree felony.
- \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- \$300 or more, but less than \$10,000, the offender commits a third degree felony.



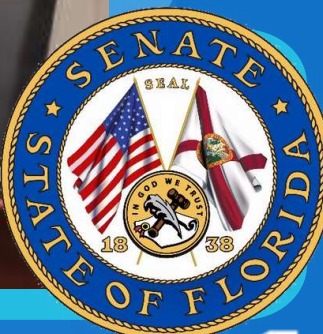
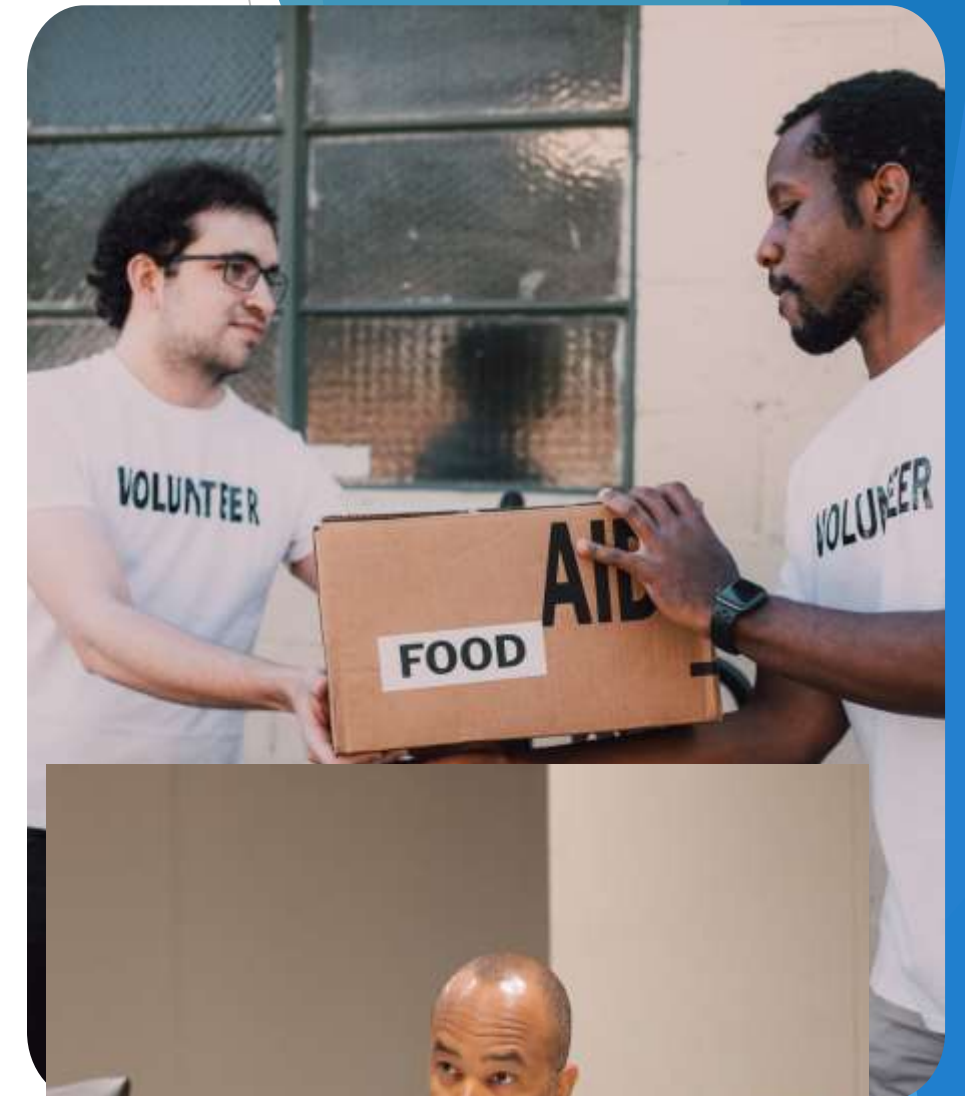
**BOBBY
POWELL**

Bills Introduced-**Stopped** in the House

Item 1.

SB 786 Youth Conflict Resolution and Peer Mediation Pilot Program

Bill would have created the Youth Conflict Resolution and Peer Mediation Pilot Program (pilot program). The purpose of the pilot program is to reduce juvenile violence by equipping students with essential skills for peaceful conflict resolution by equipping students with essential skills for peaceful conflict resolution through the use of a conflict resolution curriculum selected by the Commissioner of Education.



**BOBBY
POWELL**

Bills Introduced-**Stopped** in the House

Item 1.

SB 776 Temporary Cash Assistance Eligibility

This bill would have maintained the existing prohibition from receiving Temporary Cash Assistance (TCA) and Supplemental Nutrition Assistance Program (SNAP) assistance for individuals with felony drug trafficking convictions, but create an exemption for victims of human trafficking.



**BOBBY
POWELL**

APPROPRIATIONS



Item 1.

Palm Beach Shores - Dredging Project, **\$1,000,000**
Westgate CRA Enhanced Street Lighting & Safety Initiative, **\$250,000**
Oak Street Home II - Female Teen Delinquency Prevention Program **\$350,000**
Roosevelt School Program Enhancements, **\$847,920**
Palm Beach Atlantic University - LeMieux Center for Public Policy, **\$500,000**
Catapult! Afterschool Youth Mentoring Center Students, **\$500,000**
T3 - Teach, Touch the Trades, **\$358,750**
Palm Springs Congress Avenue Sewer Force Main - Palm Beach County, **\$1,000,000**
Mangonia Park Water Plant Expansion and Modernization, **\$750,000**

APPROPRIATIONS



Item 1.

Riviera Beach Design and Demolition of Existing Fire Station on Singer Island,
\$500,000

North Palm Beach Public Safety Resiliency, \$255,000

Palm Beach Zoo Safety & Security Upgrades, \$110,000

West Palm Beach Fire Department Contaminant Reduction Project, \$116,000

Riviera Beach - Shore, Palm, Riviera Drive Pavement Restoration, \$350,000

PBC Sheriff's Office Substation, \$500,000

APPROPRIATIONS



Item 1.

Palm Beach State College - Remodel of Student Library, **\$9,762,824**
Regional Entrepreneurship Centers and Small Business Loan Fund, **\$2,000,000**
Cox Science Center and Aquarium Expansion, **\$5,000,000**
Peanut Island Historic Restoration, **\$1,000,000**
YMCA of the Palm Beaches Community Center, **\$500,000**
Town of Lake Clarke Shores - Pine Tree Lane Bridge Replacement, **\$250,000**
City of Belle Glade Sidewalk Replacement, **\$250,000**
City of Greenacres - Chickasaw Road Expansion Project, **\$250,000**
City of Palm Beach Gardens RCA Boulevard Roadway Improvements, **\$400,000**
and more

APPROPRIATIONS FOR
PALM BEACH COUNTY over \$30,000,000



Major Session Bills Passed

HB 491 Employment

- Lawmakers passed a bill that would loosen work restrictions on 16 and 17-year-old youths. For example, it would maintain a 30hour a week limit for the teens when school is in session but would allow parents or school superintendents to waive the limit.

**TEEN
WORKERS**

Item 1.



**BOBBY
POWELL**

15

Major Session Bills Passed

HB 1365 Unauthorized Camping and Public Sleeping

HOMELESS: Lawmakers passed a controversial plan that would bar cities and counties from allowing homeless people to sleep at places such as public buildings and in rights of way. Local governments could designate sites for sleeping or camping if they meet certain standards.

HOMELESS Item 1.



Major Session Bills Passed

SB 484 Flood Disclosure in the Sale of Real Property

- Requires the seller of residential real property to complete and provide a flood disclosure to a purchaser of residential real property at or before the time the sales contract is executed

FLOOD DISCLOSURE

Item 1.



Major Session Bills Passed

HB 3 Social Media Protection for Minors

The bill will ban social media accounts for children under 14 and require parental permission for 15 and 16 year olds. It was slightly watered down from a proposal DeSantis vetoed a week before the annual legislative session ended



Major Session Bills Passed

SB 280 VACATION RENTALS

Lawmakers passed a bill regulating short-term vacation rental platforms like Airbnb and Vrbo which preempts regulation to the state while local governments could have registration programs.

The bill says that the maximum overnight occupancy of a vacation rental cannot exceed two persons per bedroom, plus an additional two persons in one common area, or more than two persons per bedrooms if at least 50 square feet per person, plus an additional two persons in one common area, whichever is greater.

**VACATION
RENTALS** Item 1.



**BOBBY
POWELL** 19

Team Powell



District Office:

2715 N. Australian Avenue
West Palm Beach, FL 33407
Phone: (561)650-6880

Tallahassee Office:

404 South Monroe Street
Tallahassee, FL 32399
Phone: (850)487-5024



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**Chief Legislative Aide
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**Legislative Intern
Sabrina Vidaillet**

Junior at Florida State University



**Legislative Intern
Baelin Warthen**

Senior at Florida A&M University

Email: powell.bobby@flsenate.gov



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QUESTIONS OR
COMMENTS?
THANK YOU!



BOBBY
POWELL



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Proclamation declaring May 19, 2024, through May 25, 2024, as National Public Works Week in the Town of Lake Park, Florida

Approved by Town Manager: Bambi McKibbon-Turner **Date:** 2024.04.26 12:22:44 -04'00'

Digitally signed by Bambi McKibbon-Turner
DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
ou=Public Works, email=btturner@lakeparkflorida.gov, c=US
Date: 2024.04.26 12:22:44 -04'00'

Cost of Item: \$0.00 **Funding Source:** N/A

Account Number: N/A **Finance Signature:** N/A

Advertised:
Date: N/A **Newspaper:** N/A

Attachments: Proclamation

Please initial one:

JM Yes I have notified everyone
Not applicable in this case

Summary Explanation/Background:

Every day, the Town of Lake Park's Public Works Department delivers exceptional service to our residents and businesses who consider Lake Park home. The department's seven (7) divisions (Administration, Facilities Maintenance, Grounds Maintenance, Infrastructure Maintenance, Sanitation, Stormwater, and Vehicle Maintenance) also provide cost-effective, creative, and strategic solutions to provide a clean, safe, and high-quality community in which to live, work, and play.

Since 1960, many states, provinces, and municipalities from across North America have come together to celebrate National Public Works Week with official government proclamations and resolutions in honor of the contribution public works makes to their communities: in planning, building, managing, and operating the heart of our local communities and in building quality of life in our community.

Finally, representatives from each department will attend the Town Commission meeting of May 15, 2024, to receive this much deserved proclamation.

Recommended Motion:

There is no recommended motion associated with this agenda item.

Proclamation in Honor of National Public Works Week

WHEREAS, the sphere of public works, which includes Sanitation, Facility Management, Streets Maintenance, Fleet Management, Stormwater Management, and Ground Maintenance, stands as the bedrock of our community's infrastructure. This diverse and essential sector is dedicated to crafting and preserving environments that are both resilient and sustainable, ensuring the health, safety, and happiness of all who call the Town of Lake Park home;

WHEREAS, the broad spectrum of critical infrastructure facilities and services—ranging from sanitation to the maintenance of public facilities, spaces, and stormwater systems—are the product of the relentless dedication of public works professionals. This group includes frontline workers across government and the private sector, who commit themselves to the enhancement, protection, and restoration of our community's infrastructure;

WHEREAS, our community's well-being, safety, and comfort significantly rely on the specialized services provided by our Public Works Department. The commitment and efficiency in service delivery by the department's employees in the disciplines of Sanitation, Facility and Streets Management, Fleet Management, Stormwater Management, and Ground Maintenance merit our profound gratitude and recognition;

WHEREAS, fostering an understanding and appreciation of the importance of public works and the intricate programs and services they encompass among the citizens, civic leaders, and youth of Lake Park, Florida, is essential for our collective well-being and the advancement of public infrastructure;

WHEREAS, in times of natural disasters or critical incidents, it is the public works emergency responders who are the first on the scene and the last to leave, demonstrating an unwavering commitment to community recovery and resilience;

WHEREAS, the year 2024 marks the 64th anniversary of National Public Works Week, an event endorsed by the American Public Works Association. This year provides a unique opportunity for the Town of Lake Park to express its appreciation for the persistent and invaluable efforts of the Lake Park Public Works Department in these critical disciplines.

NOW, THEREFORE, I, Roger Michaud, Mayor of the Town of Lake Park, at this moment proclaim the week of May 19 through May 25, 2024, as:

National Public Works Week

I urge all residents and civic groups to engage with and recognize the complexities and challenges of delivering public works services. It is a time to celebrate and honor the dedication and contributions of public works personnel in enhancing our daily lives and safeguarding our community's future.

IN WITNESS of which, I have hereunto set my hand and caused the official Seal of the Town of Lake Park, Florida, to be affixed on this 15th day of May 2024.

By: _____
Mayor Roger Michaud

Attest: _____
Vivian Mendez, Town Clerk

Agenda Request Form

Agenda Item No.

Date: 5-15-24

Name/Title

Originating Department: Town Clerk	Costs: \$ 0.00 Funding Source: Acct. # <input type="checkbox"/> Finance _____	Attachments: Proclamation
Advertised: Date: _____ Paper: _____ [X] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case LW Please initial one.

Recommended Motion: No Motion Needed.

Proclamation

Whereas, the National League of Cities was founded in 1924 in Lawrence, Kansas, as the American Municipal Association by state municipal leagues seeking more coordination and national representation as cities, towns, and villages expanded rapidly;

Whereas, the nonpartisan National League of Cities is the oldest and largest organization representing municipal governments throughout the United States, representing the interests of more than 19,000 cities, towns, and villages across the country;

Whereas today, the National League of Cities works in partnership with 49 state municipal leagues across the country to strengthen local leadership, drive innovation, and influence the federal policies that impact local programs and operations;

Whereas, as the voice of cities, towns, and villages in Washington, DC, the National League of Cities has successfully championed federal legislative solutions that support municipalities and has worked closely with Congress and the Executive Branch to educate policymakers on the realities of local implementation;

Whereas, the Town of Lake Park is a proud member of the National League of Cities, and has benefited from the organization's research, technical expertise, federal advocacy and opportunities to learn from other local governments;

Whereas, local governments are the bedrock of American democracy, providing 336 million residents with the most accountable, responsive, inclusive, ethical, and transparent government in the world;

Whereas, from the nation's smallest villages to its largest cities, America's local governments have been essential in transforming the United States of America into the greatest, most influential nation in world history;

Whereas, The Town of Lake Park was first incorporated in 1923 and is proudly served today by Mayor Roger Michaud, Vice-Mayor Kimberly Glas-Castro, Commissioner Judith Thomas, Commissioner Mary Beth Taylor, Commissioner Michael Hensley and a municipal workforce of 66 dedicated public servants;

Now, therefore, be it resolved that the Town of Lake Park hereby proclaims May 2024 as

National Cities, Towns and Villages Month

in celebration of America's local governments and the National League of Cities' historic centennial anniversary.

IN WITNESS WHEREOF, I have hereto set my hand and caused the official Seal of the Town of Lake Park, Florida to be affixed this 15th day of May, 2024.

BY:

ATTEST:

Mayor Roger Michaud

Laura Weidgans, Deputy Town Clerk



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: **May 15, 2024**

Agenda Item No.

Agenda Title: May 1, 2024 P3 Workshop Minutes

- | | |
|---|--|
| <input type="checkbox"/> SPECIAL PRESENTATION/REPORTS
<input type="checkbox"/> BOARD APPOINTMENT
<input type="checkbox"/> PUBLIC HEARING ORDINANCE ON _____ READING
<input type="checkbox"/> NEW BUSINESS
<input type="checkbox"/> OTHER: _____ | <input checked="" type="checkbox"/> CONSENT AGENDA
<input type="checkbox"/> OLD BUSINESS |
|---|--|

John
Approved by Town Manager D'Agostino

Digitally signed by John D'Agostino
 DN: cn=John D'Agostino, o=Town of Lake Park, ou=Town Manager, email=jdagostino@lakeparkflorida.gov, c=US
 Date: 2024.05.03 16:52:44 -04'00'

Date: _____

Laura Weidgans, Deputy Town Clerk

Name/Title

Originating Department: <p style="text-align: center;">Town Clerk</p>	Costs: \$ 0.00 Funding Source: Acct. # <input type="checkbox"/> Finance _____	Attachments: <p style="text-align: center;">Minutes Exhibit A</p>
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case LW. Please initial one.

Recommended Motion: I move to approve the May 1, 2024 P3 Workshop Minutes.



Lake Park Town Commission, Florida

Public, Private Partnership (P3) Workshop

Commission Chamber, Town Hall, 535 Park Avenue, Lake Park, FL 33403

Wednesday May 01, 2024 6:00 pm

Roger Michaud	—	Mayor
Kimberly Glas Castro	—	Vice Mayor
Michael Hensley	—	Commissioner
Mary Beth Taylor	—	Commissioner
Judith Thomas	—	Commissioner
John D'Agostino	—	Town Manager
Thomas J. Baird.	—	Town Attorney
Vivian Mendez, MMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contract the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.

CALL TO ORDER/ROLL CALL

6:12 P.M.

PRESENT

Mayor Roger Michaud

Vice-Mayor Kimberly Glas-Castro

Commissioner Mary-Beth Taylor

Commissioner Judith Thomas

Commissioner Michael Hensley

PLEDGE OF ALLEGIANCE

Ms. Kelly Steele led the pledge.

SPECIAL PRESENTATION/REPORT:

1. This workshop will be the third of regular quarterly updates on the P3 Marina Development Project for the Lake Park Harbor Marina to be provided to the Town Commission by Lawrence Zabik President of Zabik and Associates.

Mr. Larry Zabik presented to the Commission via Exhibit A. He announced that the approval for clearance from the reverters and deed restrictions must be approved by the Governor and the Cabinet before moving forward with the project and does not believe this would create a significant delay. Town Manager D'Agostino clarified that the ground leases are tied to the reverter clauses. Mr. Zabik confirmed this to be true. Town Manager D'Agostino spoke about Town liability in relation to the reverter clauses and feels that we should be able to move forward. He went on to say that he anticipates a September meeting before the Governor and Cabinet and believes an addendum will be needed to the time-line based on this. Vice-Mayor Glas-Castro asked questions about the legal description. Mr. Zabik stated the surveyors are preparing the legal description of the subsets of the property. Vice-Mayor Glas-Castro asked if the Department of Environmental Protection (DEP) is looking for payment for the release of the reverter clauses. Town Manager D'Agostino stated there would be a value that would be determined on parcels as opposed to the entire Marina. The Commission thanked Mr. Zabik for the update.

PUBLIC COMMENT:

This time is provided for addressing items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember comments are limited to a TOTAL of three minutes.

NONE

TOWN ATTORNEY, TOWN MANAGER, COMMISSIONER COMMENTS:

NONE

ADJOURNMENT:

Motion to adjourn made by Vie-Mayor Glas-Castro, seconded by Commission Hensley.

Voting Aye: All

Adjourned 6:26 pm

Mayor Roger D. Michaud

Town Seal

Vivian Mendez, Town Clerk

Laura Weidgans, Deputy Town Clerk

Approved on this _____ of _____, 2024

Exhibit A

LAKE PARK MARINA P3 QUARTERLY UPDATE

FOREST DEVELOPMENT

MAY 1, 2024

OVERVIEW – KEY ACTIVITIES

- Boat Storage, Restaurant, and Marina Leases are ready for approval.
- PUD plan revised and in staff review.
- DEP coordination for Reverter ongoing, PUD plan revised.
- DEP confirmation of use pending.
- Marina resiliency planning underway.
- Annotated Exhibit B - Updated.
- Gantt Chart – Updated.

	Activity Name	Org Duration	Early St.	Early Fin.	2	2023	2024	2025	2026	2027	2028	20
1	Master Critical Path 5.1.2024	1855	7/1/2022	7/29/2027								
2	Complete Comprehensive Agreement	356	7/1/2022	6/21/2023								
3	Site Plan Development & Finalization	211	5/24/2023	12/20/2023								
4	Public input and workshop	0	6/21/2023	6/21/2023								
5	Town Commission Review/Workshop	42	6/22/2023	8/2/2023								
6	Marina Permit Preparation	162	7/13/2023	12/21/2023								
7	Approval of Comprehensive Agreement	0	8/2/2023	8/2/2023								
8	Ground Lease Hotel (template) Pod A	44	8/3/2023	9/15/2023								
9	Lake Park approval of Hotel ground lease	110	9/16/2023	1/3/2024								
10	Initial Marina Permit Submission Ramp Pod C	0	12/2/2023	12/2/2023								
11	Marina Permit Review Ramp Pod C	730	12/3/2023	12/1/2025								
12	PUD Master Site Plan Submission	0	12/20/2023	12/20/2023								
13	PUD Site MasterPlan Review and TCApproval	196	12/21/2023	7/3/2024								
14	Marina Improvements Site Plan Submission Pod C	234	7/31/2024	3/21/2025								
15	Boat Storage Site Plan Submission and Review Pod B	183	9/20/2024	3/21/2025								
16	Marina Rest.Site Plan Submission and Review Pod D	183	9/20/2024	3/21/2025								
17	Hotel Site Plan Submission and Review Pod A	183	9/20/2024	3/21/2025								
18	Marina Upgrades Phase I Boat Ramp Pod C	300	1/13/2025	11/8/2025								
19	Construction of Boat Storage Pod B	365	3/22/2025	3/21/2026								
20	Construction of Marina Restaurant Pod D	365	3/22/2025	3/21/2026								
21	Permit and Construction of Hotel Pod A	718	3/22/2025	3/9/2027								
22	Marina Permit Approval Pod C	0	12/1/2025	12/1/2025								
23	Marina Resiliency Improvements Pod C	420	12/2/2025	1/25/2027								
24	Marina Upgrade Phase II Initial Expansion Pod E	365	12/2/2025	12/1/2026								
25	Marina Upgrade Phase III Full Expansion Pod E	240	12/2/2026	7/29/2027								

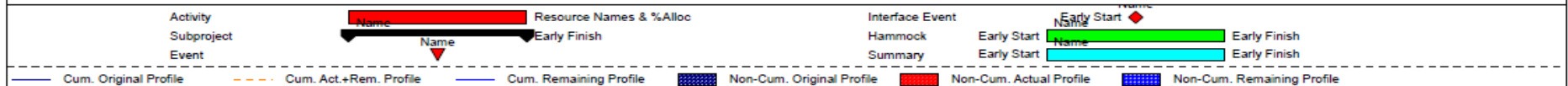


EXHIBIT B**Marina Properties Redevelopment Project Critical Path**

Note: All times periods set forth in this Project Critical Path are subject to Force Majeure extensions of time.

Comprehensive Agreement Effective Date: The date of the execution of the Comprehensive Agreement (the "Effective Date")

Ground Leases: Developer to provide drafts of the Ground Leases within 90 days of the Effective Date; the Town and the Developer will use their best efforts to execute the Ground Leases within 30 days of the date that the Developer provides drafts of the Ground Leases. The date that the Ground Lease is executed for each Component shall be referred to as the "**Ground Lease Execution Date**".

Hotel (model) Draft
Sent on 9/15/23.

Hotel Approved
1/03/24.

Deed Restrictions and Reverter Clauses: Town and Developer will work to resolve the Deed Restrictions and Reverter Clauses using best efforts within 180 days from the Effective Date; the date that the Deed Restrictions and Reverter Clauses are resolved to Developer's reasonable satisfaction shall be referred to as the "**Title Cleared Date**".

Letter Sent to State
on 12/21/23.

PUD/Master Plan: Developer shall submit a PUD application with an accompanying Master Plan for the Project within 120 days of the last of the Ground Lease Execution Date for all of the Components. The date that the Town approves of the master plan shall be referred to as the "**PUD Master Plan Approval Date**".

12/20/2023.
Response and
Resubmittal 4/17/24

Hotel Component:

Developer shall submit a site plan of the Hotel Component approval within 90 days of the Master Plan Approval Date.

Pending PUD Approval

Within 210 days of the issuance of site plan approval for the Hotel Component, Developer shall submit design and building permits.

Within 18 months of the issuance of all necessary permits to commence construction and the issuance of the Development Order by the Town for the Hotel Component, Developer shall complete construction of this Component.

Within 90 days of the completion of this Component, Developer shall obtain the certificate of occupancy for this Component.

Boat Storage Component:

Developer shall submit for site plan approval for the Boat Storage Component within 90 days of the latter of (i) the Title Cleared Date or (ii) the Master Plan Approval Date.

Pending PUD Approval

Within 180 days of the issuance of site plan approval for the Boat Storage Component, Developer shall submit design and building permits.

Within 12 months of the issuance of all necessary permits to commence construction and the issuance of the Development Order by the Town for the Boat Storage Component, Developer shall complete construction of this Component.

Within 90 days of the completion of this Component, Developer shall obtain the certificate of occupancy for this Component.

Public Marina Component:

Developer shall submit for site plan approval for the Public Marina Component within 90 days of the latter of (i) the Title Cleared Date or (ii) the Master Plan Approval Date.

Pending PUD
Approval

Within 180 days of the Effective Date, Developer and Town shall work together to start the process of obtaining any and all necessary Government Approvals, including federal, state, county, Florida Department of Environmental Protection, the United States Coast Guard, and other governing agencies; the date that all necessary approvals have been obtained as described in this paragraph shall be referred to as the "Marina Approval Cleared Date".

First Permit - DEP

Started 12/02/23.

Within 200 days of the Marina Approval Cleared Date, Developer shall submit design and building permits.

Within 365 days of the issuance of all necessary permits to commence construction [and the issuance of the Development Order by the Town for the Public Marina Component, Developer shall complete construction of this Component.

Within 90 days of the completion of this Component, Developer shall obtain the certificate of occupancy for this Component.

Marina Restaurant Component:

Developer shall submit for site plan approval for the Marina Restaurant Component within 90 days of the latter of (i) the Title Cleared Date or (ii) the Master Plan Approval Date.

Pending PUD
Approval

Within 210 days of the issuance of site plan approval for the Marina Restaurant Component, Developer shall submit design and building permits.

Within 365 days of the issuance of all necessary permits to commence construction and the issuance of the Development Order by the Town for the Marina Restaurant Component, Developer shall complete construction of this Component.

Within 90 days of the completion of this Component, Developer shall obtain the certificate of occupancy for this Component.

UPCOMING KEY EVENTS

- Town of Lake Park Planning & Zoning Board Review – June 2024.
- Town of Lake Park Commission Review and Approval – July 2024.
- Hotel/Boat Storage site plan submission – September 2024.
- Boat Storage and Restaurant ground lease approval – May 2024.
- Marina lease and operating agreement being prepared.
- Questions & Answers



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Agenda Item No.

Agenda Title: May 1, 2024 Regular Commission Meeting Minutes.

- ☐ SPECIAL PRESENTATION/REPORTS ☒ **CONSENT AGENDA**
☐ BOARD APPOINTMENT ☐ OLD BUSINESS
☐ PUBLIC HEARING ORDINANCE ON _____ READING
☐ NEW BUSINESS
☐ OTHER: _____

Bambi McKibbon-

Approved by Town Manager **Turner**

Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake
 Park, ou=Assistant Town Manager/Human Resources
 Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.07 14:35:35 -04'00'

Laura Weidgans, Deputy Town Clerk

Name/Title

Originating Department: Town Clerk	Costs: \$ 0.00 Funding Source: Acct. # <input type="checkbox"/> Finance _____	Attachments: Minutes Exhibits A-C Comment Cards
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case LW. Please initial one.

Recommended Motion: I move to approve the May 1, 2024 Regular Commission Meeting Minutes.



Lake Park Town Commission, Florida

Regular Commission Meeting

Commission Chamber, Town Hall, 535 Park Avenue, Lake Park, FL 33403

Wednesday May 01, 2024

Immediately Following the Special Call Community
Redevelopment Agency Meeting

Roger Michaud	—	Mayor
Kimberly Glas Castro	—	Vice Mayor
Michael Hensley	—	Commissioner
Mary Beth Taylor	—	Commissioner
Judith Thomas	—	Commissioner
John D'Agostino	—	Town Manager
Thomas J. Baird.	—	Town Attorney
Vivian Mendez, MMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contract the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.

CALL TO ORDER/ROLL CALL

6:57 P.M.

PRESENT

Mayor Roger Michaud

Vice-Mayor Kimberly Glas-Castro

Commissioner Mary-Beth Taylor

Commissioner Judith Thomas

Commissioner Michael Hensley

PLEDGE OF ALLEGIANCE

The Pledge was bypassed.

SPECIAL PRESENTATION/REPORT: None**PUBLIC COMMENT:**

This time is provided for addressing items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember comments are limited to a TOTAL of three minutes.

-Michael Steinhauer, 435 Greenbriar- Requested to be heard on a future agenda item having a non-participant Commission member. He provided detailed comments via Exhibit A.

-Guerly Adonis, 120 S Olive Ave- requested an item be placed on the next agenda for residents but she did not elaborate. Her comment card reads as follows: "Appointment of a non-voting, non-partisan public member to the Town Commission."

-Marie Lourdes Rosembert, 120 S Olive Ave- merely stated she is from the same group 501c3. Her comment card reads as follows: "Appointment of a non-voting, non-partisan public member to the Town Commission."

-Ramona Shultz, 301 Lake Shore Drive Unit 404 expressed concern regarding new language for selling properties in Town and expects to be kept informed.

-Rafael Moscoso, 429 Greenbriar Drive spoke about having a non-participant on the Commission and ask for a future item to be on agenda.

-John Linden, 568 N Redwood Drive suggested having a contest by the residents to name the new pocket park on 7th and Park Avenue. He also spoke about a code enforcement issues that needs an explanation to residents on a future agenda.

-Ellicia Brown - school teacher spoke about getting assistance with a literacy program at their school.

-Patricia Leduc, 409 2nd Street spoke about the Lake Park scrub area.

TOWN ATTORNEY, TOWN MANAGER, COMMISSIONER COMMENTS:

Town Attorney Baird had no comments.

Town Manager D'Agostino presented his comments via Exhibit B and also announced his upcoming retirement.

Mayor Michaud thanked the Town Manager for everything he has done for the Town.

Commissioner Hensley wished the Town Manager well.

Commissioner Taylor also wished him well.

Commissioner Thomas thanked the Town Manager for being so supportive of her and wished him well.

Vice-Mayor Glas-Castro spoke about all of the positive contributions Town Manager D'Agostino made to the Town.

Town Attorney Baird commented on the legacy the Town Manager is leaving behind.

CONSENT AGENDA:

All matters listed under this item are considered routine and action will be taken by one motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and considered in its normal sequence on the agenda. Any person wishing to speak on an agenda item is asked to complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

Items 2 and 3 pulled by Commissioner Thomas.

Motion to approve consent items 1 & 4 made by Commissioner Thomas, seconded by Vice-Mayor Glas-Castro. Voting Aye: All.

Commissioner Thomas asked for clarification on item 2. The representative from Kast Construction explained that the May 2nd through the 8th request has been withdrawn. They are requesting from May 13th through the 22nd possible extended hours until 9pm on regular working days and from 7am to 7pm on Sunday, but they do not intend to work on Sunday or beyond regular hours unless needed for weather concerns.

Motion made to approve item 2 made by Commissioner Thomas, Seconded by Vice-Mayor Glas-Castro. Voting Aye: All.

Commissioner Thomas asked for clarification of the item. Town Manager D'Agostino stated that the purpose is only for road expansion in that area and that the rights to the minerals in the ground would be reserved on both the County end and the Town's in order to construct the road.

Motion made to approve item 3, Resolution 23-05-24 by Commissioner Thomas, seconded by Commissioner Taylor. Voting Aye: All

1. April 17, 2024 Regular Commission Meeting Minutes
2. Nautilus 220 – Extended Hours and Sunday Work Hours for Crane Dismantles:

May 2-8 - Requesting permission to work extended hours/overnight (24hrs and on Sunday the 5th from 7am to 7pm)

3. Resolution 23-05-24 For the Release of the Town's Reservation of Rights to Phosphate, Minerals, Metals and Petroleum for Land Previously Conveyed to Palm Beach County.
4. Resolution 25-05-24 to Approve an Interlocal Agreement with Palm Beach County for the Expansion of the CRA Boundaries.

PUBLIC HEARING(S) - ORDINANCE ON FIRST READING:

5. Ordinance 062024 on Resiliency Standards for Tidal Flood Protection
 AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 76 TO CREATE A NEW A NEW ARTICLE VI, ENTITLED “RESILIENCY STANDARDS FOR TIDAL FLOOD PROTECTION”; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.
 Town Manager D'Agostino explained the item see “Exhibit C”. Town Manager D’Agostino stated that the Ordinance provides for an increase in the height of the seawall. He believes that communities on Florida’s east coast are increasing their seawalls to five feet. He stated that applications that will be permitted prior to January 1, 2035 may be permitted a minimum elevation of 4 feet with 5 feet being sought by 2050. He also went on to cite State statute regarding any improvements that are made to condominiums. “The real estate is located within a tidally influenced area, the owner may be required by county or municipal ordinance to meet minimum tidal flood barrier elevation standards, furign construction, or substantial repair, or substantial rehabilitation of seawalls, banks, berms or similar infrastructure or when required to abate nuisance flooding.” He went on to say that there was talk about there being a cost of \$10,000.00 per condo, per quarter which is credited as being part of the disclosure which is in the Ordinance. However, he stated that none of this needs to be done until 2035.

He went on to say that if a seawall is beginning to fail, there will need to be a repair sooner than later and if it is not repaired they can be cited. Raul Mercado, Principal Engineer for Water Resource Management Associates (WRMA) explained Senate Bill 1094 called “The Peril of Flood” and the reason for the Ordinance and provided a verbal presentation of this item outlining Florida statutes, flooding and the need to increase seawall height. He provided a status on the seawalls in the Town of Lake Park in 2021 as reported as a result of an assessment. The ratings were mostly fair and two were serious for degradation. He advised that all other communities on the East coast of Florida are proactively increasing seawalls to 5 feet or more due to predicted sea levels rising.

Town Manager D’Agostino provided additional history on the matter. He stated that three years ago, the Town met with the properties on Lake Shore Drive regarding the seawall and it was suggested that we apply for grant money. He went on to say that the grant money comes with requirements in which the condos had to create a boardwalk on seawall. At the time, he stated the residents agreed that they did not want to go that route and they would foot the bill on their own. He stated that a structural assessment needs to take place and the property owners have the option of having the assessment done on their own.

Vice-Mayor Glas-Castro asked where they obtain the five foot surge model from. Mr. Mercado responded that it comes from a Southeast Florida Regional Climate Compact decision to use a minimum five foot standard which is based on projected sea level rises. Vice-Mayor Glas-Castro also asked if a seawall will only be cited if tidal waters flow unimpeded through or over the barrier and onto an adjacent property or right of way. Town Manager D’Agostino confirmed this to be correct. She asked if the existing seawalls meet the criteria to have another seawall placed in front of them. Mr. Mercado said that was not a part of the study. Mayor Michaud asked about the mention of four foot versus five foot seawall elevation requirements. Mr. Mercado advised that if the repairs are done now, the requirement is four feet. If the repairs are done after 2035, the requirement will be five feet with all seawalls meeting the minimum of five feet by 2035.

Public Comment:

- Michael Caputo, 301 Lake Shore Drive – Expressed concern with the language pertaining to selling their properties and asks the Commission to reconsider the verbage.
- George Ray, 501 Lake Shore Drive – would like to defer his time to John Leary.
- Kelly Steele, 301 Lake Shore Drive – asked the Town for help with what the next steps would be to address their seawall. She did not receive anything in the mail about this Ordinance and is requesting this item be tabled. She reminded everyone about the Great American Cleanup on Saturday.
- Sue Meyer, 801 Lake Shore Drive – Stated that they did not receive the letter about the Ordinance.
- Chris Steele, 301 Lake Shore drive – Asked for this Ordinance to be postponed as this item needs more discussion. Also expressed concerns over comments made about development in the Town and requests to be included in future discussions with developers.
- Quinn Resnick, 301 Lake Shore Drive – Spoke about seawall cost assessments. Requests to postpone this item.
- John Leary, 501 Lake Shore drive – Spoke about a provision in the Ordinance and a conversation with a developer. He is requesting this item be tabled for future discussion.
- Susan Raye, 301 Lake Shore Drive – Would like to have item tabled. She did not receive the letter. She talked about Nautilus 220 seawall affecting their property. She is requesting the Town send out letters to all of the residents affected in layman's terms.
- Rett Thompson, 1457 Flagler Blvd – Spoke about seawall structures and elements of flood protection.
- Jim Tangye, 801 Lake Shore Drive- Spoke about the Ordinance being a shock for all of their residents and would like to postpone this item so they have time to look into it. Mayor Michaud asked when the letter to residents was sent out. Town Manager D'Agostino said that it had not been sent out.

Mayor Michaud also asked if a postponement of this item would affect operations. Town Manager D'Agostino advised that there is no problem to delay the item to a specific date and feels that the Town should be able to meet with the residents all at once so that everyone gets the same information.

Vice-Mayor Glas-Castro asked how long the moratorium is still effective for. Town Manager D'Agostino stated it is in effect until June. He advised the Ordinance would have to have a second reading in June in order to be in line with the moratorium. Vice-Mayor Glas-Castro asked about the statutory requirement for the real estate disclosure. Town Manager D'Agostino stated that it was legislation that was recently passed by the State Legislature regarding repairs to condominiums and that an Engineer's Assessment must be done by all condominiums by the end of the year and that any potential buyers be given the disclosure. Vice-Mayor Glas-Castro asked where the specific language in the disclosure came from and that the effective had passed already. Town Manager D'Agostino stated he was not sure where the language came from but that the language would be revised and a new effective date issued. Vice-Mayor Glas-Castro asked if there was anything in the capital plan for the improvement of the outfall on South Lake. Town Manager D'Agostino stated there have been discussions about that including a balloon mechanism that would prevent water from coming into the area, but measures have not yet been taken. She requested the Town Manager provide clarifying information as requested by the residents. She does not feel that there is a need to rush to get this Ordinance done by June. Mayor Michaud agrees with there not being a need to rush.

Commissioner Hensley stated he feels we do not need to rush the process.

Commissioner Thomas stated that the title of the Ordinance has an error that needs to be adjusted. She stated that she looked at language that other municipalities have adopted and that the language in the Ordinance is consistent with theirs and also consistent with Florida Statute. She feels that the residents are asking that this item be tabled to allow for more time. Commissioner Taylor believes the item should be tabled to allow for

more time. Mayor Michaud stated the item will be tabled as a result of the Commission consensus. The Ordinance has been tabled.

PUBLIC HEARING(S) - ORDINANCE ON SECOND READING: None

NEW BUSINESS:

6. Coastal Middle and High School Graduation Waiver Requests

Town Manager D'Agostino explained that Coastal Middle and High School are asking for a waiver of fees for special events in the amount of \$873.75

Motion made to approve waiving the fees by Commissioner Taylor, Seconded by Commissioner Thomas.

Voting Yea: Mayor Michaud, Vice-Mayor Glas-Castro, Commissioner Taylor, Commissioner Thomas, Commissioner Hensley.

7. Approval of Fiscal Year 2024-2025 Budget Calendar

Town Manager D'Agostino explained the calendar (Exhibit C).

Motion made by Commissioner Taylor, Seconded by Commissioner Hensley.

Voting Yea: Mayor Michaud, Vice-Mayor Glas-Castro, Commissioner Taylor, Commissioner Thomas, Commissioner Hensley.

8. Haitian Flag Day Celebration Requests

Town Manager D'Agostino explained that the Town received a request for fee waiver in the amount of \$1,152.00 and use of some Town supplies. Commissioner Taylor asked for clarification on how much had already been given and granted to this organization's event so far by the Town. Mayor Michaud stated it was \$10,222.26. Commissioner Thomas asked what further contributions this organization would be seeking. Special Event Director Riunite Franks stated there would only be some marketing materials offered and that there are still funds left for waivers in this fiscal year.

Motion made to approve by Commissioner Hensley, Seconded by Commissioner Thomas.

Voting Yea: Mayor Michaud

Voting Nay: Vice-Mayor Glas-Castro, Commissioner Taylor.

REQUEST FOR FUTURE AGENDA ITEMS:

Vice-Mayor Glas-Castro stated that the Town's Charter does now allow for an additional person to be appointed to the Commission as some of the residents requested. She also spoke about education of the Code Enforcement process and believes this would be a good workshop for a Saturday. Mayor Michaud stated that he was interested in seeing a Community Forum with the first topic on Code Enforcement. The Commission agreed on June 27, 2024 to hold the first Forum. Commissioner Taylor stated there was nothing in the Town Newsletter about the Joint Planning & Zoning Meeting with North Palm Beach. Chief Information Officer/Grants Writer Merrell Angstreich stated that the information about that was available on the Town's website. Commissioner Hensley thanked the PBSO Sherriff's Department and the Fire Department and Mario Culpepper for their work on the fire on Saturday. Mayor Michaud stated that he recommended a proclamation for Mr. Culpepper and his heroic acts.

ADJOURNMENT:

Motion to adjourn made by Commissioner Hensley, Seconded by Commissioner Taylor.

Voting Aye: All

9:45 P.M.

FUTURE MEETING DATE: Next Scheduled Regular Commission Meeting will be held on May 15, 2024.

Mayor Roger D. Michaud

Town Seal

Laura Weidgans, Deputy Town Clerk

Approved on this _____ of _____, 2024

Exhibit A

Comment

M

Item 5.

Request Date: May 1, 2024

TO THE LAKE PARK, FLORIDA TOWN COMMISSION

A REQUEST TO PLACE AN ITEM ON THE AGENDA FOR THE MEETING SCHEDULED FOR JUNE 1, 2024
(OR SOON THEREAFTER)

Testimony by Michael Steinhauer, Resident, Town of Lake Park, Florida

435 Greenbriar Drive

Good evening. Truthfully, I was so moved by the reception I received at the last Commission meeting, providing feedback about the proposed "Civility and Decorum" language. It demonstrated to me the importance of resident feedback about the business of the town, and your willingness to listen and act accordingly. Thank you again.

But where is the amended language tonight?

Today I appear before you to ask for a simple approval. I wish you would consider adding an agenda item to your June 1st meeting or soon thereafter. I and several other residents seek to discuss the notion of an appointment of a non-voting, non-partisan, public member to the Town Commission. As you are well aware, most of the Boards and Commissions recognized by the Town Commission have resident representation and I believe it is time to expand that representation to the Town Commission.

As I note on the Town's organizational chart, the residents who reside here are at the top, followed underneath by the Town Commission and it's 'subsidiary' boards and 501c 3 "Friends", and then the Town Manager. Thus, it seems incongruent not to have a non-voting, appointed public member sitting with you on the Town Commission dais.

The values of the Town of Lake Park should include the essential elements of a representative democracy. Such representation would enhance resident civic knowledge, participatory flow of information, the perception of residents having a voice in town governance, and better simulates the democratic process.

I/we expect that an appointment to the Town Commission would follow the usual and customary processes for appointing residents to other town boards and commissions. We would expect that the Public Member would enjoy all the rights and privileges of access to information that elected Commissioners have, with no voting rights whatsoever. There are numerous models for such public member representation that I would like to share with you during an agenda item discussion.

Please consider tonight a simple motion to place this matter as an agenda item in June and open the floor to healthy, respectful, civil, and educational information to make an informed decision.

Thank you for your attention and consideration. Good evening again.



**TOWN MANAGER COMMENTS
TOWN COMMISSION MEETING
Wednesday, May 1, 2024**

Item 5.

Exhibit B

HUMAN RESOURCES

Job Openings:

The following open positions are being advertised:

- Camp Counselor (4 positions open) – Hourly rate: \$15.43 to \$24.69
- Stormwater Technician II – Hourly rate: \$21.65 to \$34.63

The deadline for receipt of applications for the Camp Counselor positions is 5:00 p.m. on **May 10, 2024** because our summer camp program starts on June 10, 2024 and the Camp Counselors must complete their training prior to that date.

The deadline for receipt of applications for the Stormwater Technician II position is 5:00 p.m. on **May 6, 2024**.

The following volunteers are needed for the Lake Park Public Library:

- Tutors for one-on-one English language learning
- Tutors for one-on-one basic computer and digital literacy
- Data entry
- Shelving
- Facilitator for English Exchange Group

To view the complete job posting for the above positions or volunteer opportunities or to download an employment or volunteer application, please visit the Town's official website at www.lakeparkflorida.gov. For additional information please contact the Town's Human Resources Department at 561-881-3300 and choose Option 8.

New Employees:

We are pleased to announce that the following three new employees have joined our staff:

- Kerrie-Ann Burke, our new Community Development Technician in our Community Development Department
- Robert Rinaldi, our new Dock Attendant at our Marina, and
- Tanesa Rattanabounyang, our new Library Assistant – Children's at our Library.

Both Mr. Rinaldi and Ms. Rattanabounyang are here this evening.



Ms. Burke is unable to attend this evening's Commission meeting provided here is her photo. Ms. Burke has significant experience in customer service and in developing and implementing innovative customer service strategies that improve customer satisfaction and loyalty. She has expertise in training and coaching staff, as well as developing and managing operational budgets.

Item 5.

PUBLIC WORKS

In alignment with the Town of Lake Park's dedication to ensuring the safety of our residents and enhancing the visual appeal of our community, we are pleased to announce the initiation of a comprehensive **sidewalk repair project**. This important infrastructure improvement will commence in mid-May and is scheduled for completion by the end of July. For your convenience, detailed schedules have been included in the attached calendars. Our Public Information team has also disseminated this information to ensure community awareness and engagement.

SPECIAL EVENTS

Great American Cleanup

Join us for the Great American Cleanup on **Saturday, May 4** from 9:00 a.m. – 12:00 p.m. Interested volunteers will meet at Town Hall for registration, t-shirt pickup and assignments. For more information, call Kelly Steele at 561-315-8152.

Memorial Day Ceremony

The Town will host its annual Memorial Day Ceremony in Kelsey Park on **Monday, May 27** at 11:00 a.m. The event is sponsored by VFW Post 9610. For more information, call 561-840-0160.

Sunset Celebration

Sunset Celebration will be held on **Friday, May 31** from 6:00 p.m. – 9:00 p.m. in our new location at Kelsey Park. This month's event will feature live entertainment from Larry Johnson's Essence of Motown! For more information, call 561-840-0160.

2024		May					Sidewalk Repair Project Schedule	
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY		
29	30	01	02	03	04	05		
06	07	08	09	10	11	12		
13	14	15	16	17	18	19		
Bayberry Drive	Bayberry Drive	Cypress Drive	Cypress Drive	Date Palm Drive	Date Palm Drive			
20	21	22	23	24	25	26		
Date Palm Drive	Evergreen Drive	Evergreen Drive	Evergreen Drive	Evergreen Drive	Evergreen Drive			
27	28	29	30	31	01	02		
	Foresteria Drive	Foresteria Drive	Flagler Boulevard	Flagler Boulevard	Flagler Boulevard			
03	04	Notes:						
Flagler Boulevard	Flagler Boulevard							

2024		June		Sidewalk Repair Project Schedule		
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
27	28	29	30	31	01	02
03	04	05	06	07	08	09
		Greenbriar Drive	Greenbriar Drive	Greenbriar Drive	Greenbriar Drive	
10	11	12	13	14	15	16
Greenbriar Drive	Greenbriar Drive	Hawthorne Drive	Hawthorne Drive	Hawthorne Drive	Hawthorne Drive	
17	18	19	20	21	22	23
Hawthorne Drive	Hawthorne Drive	Magnolia Drive	Magnolia Drive	Magnolia Drive	Magnolia Drive	
24	25	26	27	28	29	30
Magnolia Drive	Magnolia Drive	Park Avenue	Park Avenue	Park Avenue	Park Avenue	
01	02	Notes:				
Park Avenue	Park Avenue					

2024		July		Sidewalk Repair Project Schedule		
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
01	02	03	04	05	06	07
		Park Avenue				
08	09	10	11	12	13	14
W. Ilex Drive	W. Ilex Drive	W. Ilex Drive	W. Ilex Drive	W. Ilex Drive	W. Ilex Drive	
15	16	17	18	19	20	21
W. Ilex Drive	W. Jasmine Drive	W. Jasmine Drive	W. Jasmine Drive	W. Jasmine Drive	W. Jasmine Drive	
22	23	24	25	26	27	28
W. Jasmine Drive	W. Jasmine Drive	W. Kalmia Drive	W. Kalmia Drive	W. Kalmia Drive	W. Kalmia Drive	
29	30	31	01	02	03	04
W. Kalmia Drive	W. Kalmia Drive					
05	06	Notes:				

Janet Perry

From: Jaime J. Morales
Sent: Wednesday, May 1, 2024 9:21 AM
To: John D'Agostino; Janet Perry; Bambi Turner
Cc: Paula LeBlanc; Elsie Martinez; John Wille
Subject: RE: April 2024 Capital Improvement & Bid Project Updates

Good morning, John,

I hope you are doing well.

The team has put together a short summary that provides an update for the following projects:

CAPITAL IMPROVEMENT PROJECT STATUS UPDATE

CURRENT CONSTRUCTION PROJECTS

1. 2nd Street Bioswale

Contractor: Sunshine Land Design

Budget: \$526,513.52 (Grant: \$553,758.54, Town Match: \$0.00)

Status: The project is complete.

2. 7th Street Pocket Park

Contractor: Creative Contracting Group

Budget: \$163,410.00

Status: The project is complete.

3. Streetscape (Phase 1)

Contractor: West Construction

Budget: \$466,084.00 (Includes Phase 1 Contingency: \$15,000, Phase 2 Contingency: \$7,500)

Status: Park Avenue work ongoing. Demolition work, sidewalk repair, and replacement have been completed, and the contractor is currently working on the decorative paver band installation. The landscaping work is scheduled for the week of May 13, 2024.

4. Town Hall Preservation

Budget: \$650,000.00 (Grant: \$325,000.00, Town Match: \$325,000.00)

Status: Ongoing. Roof Tile installation is in progress. The estimated time of completion is work to be completed by May 15.

5. Bert Bostrom Green Infrastructure

Contractor: DS Eakins Construction

Status: Notice to proceed issued. Construction begins the week of May 20, 2024. (The change in schedule is due to the contractor waiting for stormwater structures to be fabricated)

6. Southern Outfall Pipe Replacement

Contractor: Foster Marine Contractors

Status: The preconstruction meeting is set for Thursday, April 11, 2024. The contractor is preparing the shop drawing submittals, schedule, and other up-front documents.

7. Town Hall Fire Alarm Upgrade

Contractor: 1st Fire & Security

Budget: \$77,670.00 (Retrofit)

Status: The work has been completed. Pending final inspection by Palm Beach County Fire.

CURRENT BID PROJECTS

1. PBSO Fence Replacement

Budget: \$153,000.00

Bids received and pending final budget and commission approval.

2. PBSO Covered Parking

Budget: \$34,000.00 (To be funded by PBSO)

Bids have been received.

3. Re-Bid - West Ilex Park 2024 Enhancements

Bids have been received, and the project will commence after commission approval.

4. Re-Bid - Town Library Roof Replacement

Budget: \$266,000.00

Status: Bid date scheduled for Thursday, May 09, 2024

5. 10th Street Green Infrastructure

Stage: Design

Design Budget: \$190,000.00

Status: Preparing bid documents.

6. Southern Outfall CEI Services

Service: Inspection Services

Budget: \$120,000.00

Status: Preparing bid documents. Important

7. Curred-in-place pipelining

Budget: \$100,000.00

Status: Bid documents are currently being prepared, and the bid is scheduled for Friday, June 13, 2024.

Please let me know if this type of format works for you or if you have any particular format you may suggest we use to provide you with updated information on the ongoing projects.

Thank you.

Jaime J. Morales

Department of Public Works Director

Town of Lake Park

650 Old Dixie Highway, Lake Park, FL 33403

Phone number: (561) 881-3345, Ext. 648



Together, we construct the foundation of our future by building a stronger community, one project at a time.

Please Note: Florida has a comprehensive public records law. I'd like you to know that written communications related to Town business are public records and available to the public upon request. Your email communications are therefore subject to public disclosure. If you don't want your email released in response to a public records request, please do not send electronic mail to this entity; instead, you can contact this office by phone. Section 688.6076 F.S.



GREAT AMERICAN CLEANUP®

KEEP AMERICA BEAUTIFUL®

**Join Us For The Great American Cleanup
And Help Keep Lake Park Beautiful!**

**Saturday, May 4
9:00 AM - 12:00 PM**

**Lake Park Town Hall
535 Park Avenue
Lake Park, FL 33403**

- **FREE T-shirts For All Participants**
- **FREE BBQ**
- **Live DJ**

**Pre-register now by texting the full names and phone numbers of the members in your group to:
Kelly Steele at (561) 315-8152**



Surf & Beach Preservation



The GREAT AMERICAN CLEANUP, a project of Keep America Beautiful Inc., is coordinated locally by Keep Palm Beach County Beautiful Inc. and the Solid Waste Authority of Palm Beach County (SWA). For more information visit www.keepPBCbeautiful.org or call (561) 686-6646.



MEMORIAL DAY CEREMONY

HONORING THOSE WHO GAVE THEIR LIVES IN
SERVICE PROTECTING OUR NATION'S FREEDOM

MONDAY, MAY 27

11:00 AM

KELSEY PARK

601 US HIGHWAY 1

LAKE PARK, FL 33403

SPONSORED BY VFW POST 9610

SUNSET CELEBRATION

Item 5.

FREE MUSIC CONCERT

FEATURING

LARRY JOHNSON'S ESSENCE OF MOTOWN



FOOD VENDORS * CASH BAR * ART & CRAFT VENDORS * HAPPY HOUR
FREE ADMISSION & PARKING * NO OUTSIDE FOOD OR DRINKS

FRIDAY, MAY 31
6:00 PM - 9:00 PM

KELSEY PARK
601 US HIGHWAY 1
LAKE PARK, FL 33403



FOR MORE INFORMATION CALL 561-840-0160 OR
EMAIL SPECIALEVENTS@LAKEPARKFLORIDA.GOV



Town of Lake Park

2024/25 Budget Calendar

<u>Dates</u>	<u>Required Budget Action</u>
April 26	Fiscal year 2024/2025 proposed budgets available for updates
May 1	Present Budget Calendar at the Commission Meeting
May 8	Department Priorities schedule due back to Finance
May 16	Budgets due back to Finance for review
May 31	Estimate of Taxable Value received from Property Appraiser
June 10-14	Individual budget meetings with Department Heads
June 5	Receive the Commission's Priorities at the June 19, 2023 meeting
July 1	Property Appraiser submits Certificate of Taxable Value (DR420)
June 28	Preliminary budget is delivered to the Commission
<u>July 3</u>	Town Commission holds a preliminary <u>discussion</u> of the 2024/2025 Budget to review the budget and at the Town Commission Meeting sets the <u>not-to-exceed proposed millage rate</u> , and sets <u>the date, time and place of the first public hearing</u> (September 3)
July 23 – July 26	Proposed millage rate & calculation of rolled back rate and date for first public hearing on budget due to Property Appraiser (within 35 days of receipt of taxable value)
August 2-6	One-on-one meetings with the Commission
<u>August 21</u>	Town Commission holds a <u>Budget Workshop</u> to hear public comment, review the Fund Budgets, and discuss Town's Initiatives
<u>September 5</u>	First Public Hearing on budget at 6:30 in the Town Commission Chambers; adoption of a tentative millage rate and proposed operating budget. Subject to blackout dates from Palm Beach County Commission and Palm Beach County - School Board.
September 13-15	Run TRIM budget ad in newspaper for Saturday September 14
<u>September 18</u>	Final (second) public hearing on budget; adoption of millage rate and 2023/2024 budget. Subject to blackout dates from Palm Beach County (PBC) and Palm Beach County School District (PBCSD), dates have been published.
<u>September 4</u>	PBC-School Board meeting date
<u>September 9 & 17</u>	PBC Board of Commissioners meeting dates
<u>Sept 24-Oct 6</u>	Proof of Publication (newspaper certifies), Ordinance of final millage, Ordinance adopting the Budget and entire pages from all newspaper budget ads – mailed certified/return receipt to the Department of Revenue
<u>October 6</u>	Certifying to Tax Collector and Taxing Authorities

Lake Park Community Redevelopment Agency
2024/25 Budget Calendar

<u>Dates</u>	<u>Required Budget Action</u>
April 26	Worksheets available to staff
May 31	Estimate of Taxable Value received from Property Appraiser
Week of June 3	Budget meeting with the Executive Director, HR, Finance, and Public Works to review and set a proposed budget
June 11	Budgets due back to Finance for review
July 1	Property Appraiser submits Certificate of Taxable Value (DR420)
July 14	Preliminary budget is delivered to the CRA Board
Aug 1	Budget meeting with the Executive Director, HR, Finance, and Public Works to review changes necessary as a result of the Certificate of Taxable Value
August 5 - 9	One-on-one meetings with the Board Members
<u>August 21</u>	The CRA Board holds a special call <u>Budget Meeting</u> to review the budget. The Board will either: accept the Budget; or give staff recommendations and set a date for a second CRA Board Meeting.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Michael Steinhauer

Address: 435 Greca Road

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

Adding an agenda item to future
meeting on a public member
to the Town Commission

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Guerly Adonis OBO Change My Community (a non profit

Address: 120 E. Olive Ave, Ste 302 WPB, FL 33401 organization

If you are interested in receiving Town information through Email, please provide your E-mail address: gadonis@changemc.org

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

Appointment of a non voting non partisan, public
member to the town commission

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Marie Lourdes Prozembert OBO Change My Community
Address: 120 S. Olive Ave, Ste 302 WPB FL 33405 (a non profit organization)
If you are interested in receiving Town information through Email, please
provide your E-mail address: TSRICESA@yahoo.com

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

Appointment of a non-voting, non-partisan
public member to the Town Commission

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: RAMONA SUTCLIFF
Address: 301 RSD #404 LAKE PARK 33404
If you are interested in receiving Town information through Email, please
provide your E-mail address: RAMONA@METFILMS.COM

I would like to make comments on the following Agenda Item:

NEVER RECEIVED ANY INFORMATION

I would like to make comments on the following Non-Agenda Item(s):

WHY IS THE VILLAGE CHANGING NAMES
REGARDING SELLING OUR PROPERTY

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 1 May 2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Rafael Moscoso

Address: 429 GREENBRIAR DR

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

REQUEST TO BE PLACED ON AGENDA

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: John Linden

Address: 568 W. Redwood Dr

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

NAMING NEW POCKET PARK ON
7th & PARK AVE

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commissioner

Item 5.

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: John Linden

Address: 568 N. Redwood Dr

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

Code ENFORCEMENT Agenda Item

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Patricia Leduc

Address: 409 2nd Street

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

Lake Park Scrub

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Ellie Brown

Address: _____

If you are interested in receiving Town information through Email, please provide your E-mail address: ellie.brown@palmbeachschools.org

I would like to make comments on the following Agenda Item:

I would like to make comments on the following Non-Agenda Item(s):

Schools

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: May 1 2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Michael Caputo

Address: 301 Lake Shore Dr.

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

agenda #5 sea wall, development of
Aren.

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5/11/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: George Ray

Address: 501 Lake Shore Dr. Lake Park

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

#5

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: 5/11/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Kelly Steele

Address: 301 Lakeshore #209

If you are interested in receiving Town information through Email, please provide your E-mail address: Kelly.J.Steele@hotmail.com

I would like to make comments on the following Agenda Item:

5

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE:

5/11/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name:

Sue Meyer

Address:

801 Lakeshore Dr #101

If you are interested in receiving Town information through Email, please provide your E-mail address:

SATLMeyer@gmail.com

I would like to make comments on the following Agenda Item:

#5

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE:

5/12/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name:

Chris Steele

Address:

301 Lake Shore Dr #209

If you are interested in receiving Town information through Email, please provide your E-mail address:

I would like to make comments on the following Agenda Item:

Sea wall

I would like to make comments on the following Non-Agenda Item(s):

Development along Lake Shore Dr

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Guinn Resnick

Address: 301 Lake Shore Dr #511

If you are interested in receiving Town information through Email, please provide your E-mail address: guinn@ncloudmisp.com

I would like to make comments on the following Agenda Item:

~~Our community transparency on~~
Transparency on development plans with
condos on seawall

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: JOHN LEARY

Address: 501 LAKE SHORE DR #406

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item ✓

SEAWALL ORDINANCE

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

Commission

Item 5.

MEETING DATE: 5-1-2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: Susan RA

Address: 301 LAKE SHORE DR. UNIT 507

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

#5 * SEAWALL COMMISSION MEETING

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.

Commission



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

MEETING DATE: 5/1/2024

Cards must be submitted before the item is discussed!!

*****Three (3) minute limitation on all comments**

Name: RETT THOMPSON

Address: 1457 FLAGLER BLVD.

If you are interested in receiving Town information through Email, please provide your E-mail address: _____

I would like to make comments on the following Agenda Item:

SEAWALL

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!
***Three (3) minute limitation on all comments

Name: Jim Tangye
Address: 801 Lake Shore Drive #301
If you are interested in receiving Town information through Email, please
provide your E-mail address: jrtangye1962@gmail.com

I would like to make comments on the following Agenda Item: 5
seawall modification

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



TOWN OF LAKE PARK
PUBLIC COMMENT CARD

MEETING DATE: 5/1/24

Cards must be submitted before the item is discussed!!
***Three (3) minute limitation on all comments

Name: Thom Schuerz
Address: 301 LAKE SHORE DR #404
If you are interested in receiving Town information through Email, please
provide your E-mail address: THOM@M6TFILMS.COM

I would like to make comments on the following Agenda Item:
TIDAL FLOOD PROTECTION

I would like to make comments on the following Non-Agenda Item(s):

Instructions: Please complete this card, including your name and address; once the card has been completed, give it to the Town Clerk. The Mayor will call your name when it is time for you to speak. Comments are limited to three (3) minutes per individual.



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title:

RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A CONSTRUCTION SERVICES AGREEMENT BETWEEN THE TOWN OF LAKE PARK AND MANGONIA CONSTRUCTION GROUP, LLC FOR THE W. ILEX PARK PHASE 2 PARK IMPROVEMENTS.

Approved by Town Manager:

Bambi McKibbon-Turner

Digitally signed by Bambi McKibbon-Turner
DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park, ou=Assistant Town Manager/Human Resources Director, email=bturner@lakeparkflorida.gov, c=US
Date: 2024.05.08 15:33:50 -04'00'

Cost of Item: \$69,272.51

Partial - CDBG Grant from Palm Beach County

Funding Source:

Partial – Town of Lake Park

Account Number: 301-63823
301-63100

Finance Signature:

Barbara A. Gould

Digitally signed by Barbara A. Gould
DN: cn=Barbara A. Gould, o=Town of Lake Park, ou=Finance Dept, email=bgould@lakeparkflorida.gov, c=US
Date: 2024.05.08 15:28:15 -04'00'

Advertised: Yes

Date: 3/24/2024

Newspaper:

Palm Beach Post

Attachments:

1. Resolution
2. Contract Agreement
3. Notice of Intent to Award Letter
4. Bid Submitted by Mangonia Construction LLC.

Please initial one:

Yes, I have notified everyone

Not applicable in this case

Summary Explanation/Background:

The Town previously determined the need to replace the aging and weathering play equipment and other infrastructure at the West Ilex Park playground.

In an effort to secure funding for the equipment replacement effort, the Town applied for and was awarded a CDBG grant through Palm Beach County Department of Housing & Economic Development to be used in the replacement of the playground equipment at the West Ilex Park. and was awarded the grant.

Subsequently, the Town applied for and was awarded a second CDBG grant through Palm Beach County Department of Housing and Economic Development for additional improvements to the W. Ilex Park.

Upon receipt of the second grant, Town staff prepared an invitation to bid (ITB 107-2024), to solicit bid proposals for the Phase 2, W. Ilex Park Project. The ITB provided proposed improvements designed to enhance the existing West Ilex Park playground area.

On Wednesday, April 17, 2024 the Town received responses to the ITB 107-2024. Following careful analysis and evaluation of the responses, a determination was made to award this park improvement work to Mangonia Construction, LLC. Mangonia Construction's fully responsive and responsible bid proposal carried a total cost of **\$69,272,51** (low bid) (**Attachment 4**). The CDBG grant amount is \$47,704.00

This additional funding will assist with the implementation of additional park improvements (i.e. fence replacement, exterior lighting, additional sidewalks, benches, etc.), to be coordinated by Public Works Staff.

The Town Manager has recommended to the Town Commission that the Town enter into the Agreement with the Contractor, for the park improvement services.

The Town Manager recommends approval.

Recommended Motion:

I move to adopt Resolution _____

RESOLUTION NO. 26-05-24**A RESOLUTION AUTHORIZING AND DIRECTING THE-MAYOR TO EXECUTE A CONSTRUCTION SERVICES AGREEMENT BETWEEN THE TOWN OF LAKE PARK AND MANGONIA CONSTRUCTION GROUP, LLC FOR THE WEST ILEX PARK – PHASE 2 PARK IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Lake Park, Florida (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town wishes to make infrastructure improvements to West Ilex Park (the Project); and

WHEREAS, the Town has been awarded a grant from Palm Beach County (the County) from its Community Development Block Grant (CDBG) program in an amount of \$47,704, to be applied to the proposed park improvement work which includes new fencing around the park perimeter and electrical up-grades; and

WHEREAS, the Town staff prepared an Invitation to Bid (ITB-107-2024) to solicit bids from qualified bidders for the West Ilex Park Phase 2 park improvements; and

WHEREAS, the Town received bid proposals and after evaluation, it was determined that the bid provided by Mangonia Construction Group, LLC for \$69,272.52 was the responsive and responsible low-bid to all of the ITB requirements; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into a contract agreement with Mangonia Construction Group, LLC for the West Ilex Park Phase 2 park improvements.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The Vice-Mayor is hereby authorized and directed to execute a contract agreement with Mangonia Construction Group, LLC. A copy of the agreement is attached hereto.

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

CONSTRUCTION SERVICES AGREEMENT FOR IMPROVEMENTS TO WEST ILEX PARK

THIS AGREEMENT FOR THE WEST ILEX PARK - PHASE 2 PARK IMPROVEMENTS (AGREEMENT) is made and entered into this 15th day of May, 2025, by and between the Town of Lake Park, a municipal corporation of the State of Florida, having an address of 535 Park Avenue, Lake Park, Florida, 33403 ("Town") and Mangonia, having an address of 700 S. Rosemary Avenue, West Palm Beach, Florida, 33401, ("Contractor").

WITNESSETH THAT:

WHEREAS, the Town is a municipality with such powers and authority as is enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the Town previously determined a need to replace the aging and weathering play equipment and other infrastructure at the West Ilex Park playground (the Services); and

WHEREAS, the Town was previously awarded CDBG grant funds for playground equipment improvements to the W. Ilex Park with that work complete the Town was awarded additional CDBG grant funds for additional park improvements, now referred to as W. Ilex Park Improvements, Phase 2, and

WHEREAS, for the Phase 2 improvement project, Town staff solicited bid proposals for the for the additional park improvement work via an Invitation to Bid (ITB #107-2024); and

WHEREAS, in its response to the ITB, Mangonia Construction Group, LLC, represented that it is qualified, able, and willing to satisfactorily provide the Services solicited in the ITB; and

WHEREAS, the Contractor's response to the ITB was determined by the Town Manager to be responsive and responsible to all requirements included in the ITB; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into the Agreement with the Contractor, for the Services.

NOW, THEREFORE, the Town and the Contractor in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. The above stated recitals are true and correct, and are incorporated herein.

2. TERM AND OPTIONS

This term of the Agreement shall commence at upon its completed execution. Work shall not commence before the issuance of a notice to proceed from the Town of Lake Park. Project duration shall be as stipulated in the ITB documents.

3. COST OF SERVICES

The agreed-upon contract price for the West Ilex Park Phase 2 Improvements shall be \$69,272.51 as per the Mangonia Construction Group, LLC., submitted ITB bid proposal. The CDBG Grant award for this Phase 2 project is \$47,704.00. A Town match amount will cover the remaining balance of this agreement amount.

4. LAWS AND REGULATIONS

The Contractor shall comply with all laws and regulations applicable to provide the goods or services specified in this solicitation. The Contractor shall comply with all federal, state, and local laws in the performance of this Agreement.

5. LICENSES, PERMITS AND FEES

The Contractor shall hold all licenses and/or certifications necessary to perform the Services, and shall obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the Services to be provided. Damages, penalties, and/or fines incurred by or imposed on the Town or Contractor for failure to obtain and maintain any required licenses, certifications, permits, and/or inspections shall be the responsibility of the Contractor.

6. SUBCONTRACTING

The Contractor shall not subcontract any portion of the work required by this Agreement without the prior written consent of the Town. Subcontracting without the prior consent of the Town shall constitute a material breach of the Agreement and may result in termination of the Agreement.

7. ASSIGNMENT

The Contractor shall not assign or transfer the Agreement, including any rights, title, or interest therein, or its power to perform the Services of this Agreement to any person, company, or corporation without the prior written consent of the Town. Assignment without the prior consent of the Town may result in termination of the Agreement.

8. RESPONSIBILITIES AS EMPLOYER

The employees of the Contractor shall be considered to be at all times its employees, and not an employees or agents of the Town. The Contractor shall provide physically competent employees capable of performing the work and licensed or certified as may

be necessary to perform the Services. The Town may require the Contractor to remove any employee the Town deems to be unacceptable. All employees of the Contractor shall wear proper identification at all times while on Town properties.

It is the Contractor's responsibility to ensure that all its employees and any approved subcontractors comply with the employment regulations required by the United States Department of Homeland Security. The Town shall have no responsibility to check or verify the legal immigration status of any employee of the Contractor.

9. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the Town and its elected and appointed officers, employees, and agents from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the Town or its elected or appointed officers, employees, or agents may incur as a result of any claims, fees, demands suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the Agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor shall be responsible for paying all claims and losses, or fees in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature against the Town, for its negligence, act or omission, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit its responsibility to indemnify, keep and save harmless, and defend the Town or its elected and appointed officers, employees, and agents.

The Contractor shall have and maintain during the term insurance coverage is to be issued by an insurance company authorized, licensed, and registered to do business in the state of Florida, with a minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the Town shall be notified at least 30 days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates of insurance, including if requested by the Town policies or copies of policies by the Town or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the selected Contractor's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the Town.

The selected Contractor must submit a current Certificate of Insurance, naming the Town as an additional insured and listed as such on the insurance certificate. New certificates of insurance are to be provided to the Town upon expiration.

The selected Contractor shall provide insurance coverage as follows:

- a. WORKERS' COMPENSATION INSURANCE in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than (\$100,000 for each accident, not less than \$100,000 for each disease, and not less than \$500,000 aggregate.
- b. GENERAL LIABILITY INSURANCE with each occurrence limits of not less than \$1,000,000.
- c. PROFESSIONAL LIABILITY INSURANCE with limits of not less than \$1,000,000 annual aggregate.
- d. HIRED AND NON-HIRED VEHICLES with limits of not less than \$500,000 per claim.

10. MODIFICATION OF AGREEMENT

The Agreement may only be modified by the mutual consent, as evidenced by a written amendment to the Agreement.

11. PAYMENTS

Application for payments shall be sent to the Finance Department, "Attention: Accounts Payable" located at 535 Park Avenue, Lake Park, Florida 33403, who will ensure that each application for payment is review for accuracy and then authorize the payment of the pay application or invoice, or the return of an unacceptable pay application or invoice. All applications for payment, with the exception of the application for FINAL payment shall reflect 10% retainage of the total value of work completed.

Each pay period shall be one calendar month ending on the last day of the month. The application shall be submitted on the 25th day of the month for the period covered.

12. TERMINATION FOR CONVENIENCE

The Town, at its sole discretion, reserves the right to terminate this Agreement for convenience and without cause upon providing 60 days advance written notice to the Contractor. Upon receipt of such notice, the Contractor shall not continue to provide the Services unless the Town shall have provided written authorization.

13. TERMINATION BY CONTRACTOR

The Contractor may terminate the Agreement before the expiration of the Term provided it gives 90 days written notice of its intention to do so. In the event of termination by Contractor, the Town may procure the required goods and/or services from any source and use any method deemed in its best interest to provide the Services. All re-procurement costs shall be borne by the Contractor.

14. ACCESS AND AUDIT OF RECORDS

The Town reserves the right to require the Contractor to submit to an audit by an auditor of the Town's choosing at the Contractor's expense of its records, which relate directly or indirectly to this Agreement, at its place of business during regular business hours, or at such other places as mutually agreed to by the Town and Contractor.

The Contractor shall retain all records pertaining to this Agreement, and upon request, make them available to the Town for three (3) years following expiration of the Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the Town to ensure compliance with applicable accounting and financial standards.

15. OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General (OIG), which is authorized and empowered to review past, present, and proposed Town programs, contracts, transactions, accounts, and records. The OIG has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The OIG may, on a random basis, perform audits on all Town contracts.

16. BINDING EFFECT

All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and authorized assigns.

17. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

18. GOVERNING LAW AND VENUE

The enforcement of this Agreement shall be governed by and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida.

19. ATTORNEY'S FEES

If either party is required to initiate a legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

20. EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

The Town complies with all laws of prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority and female-owned businesses to participate.

During the performance of this Agreement, Contractor shall not discriminate or permit discrimination in its hiring practices or in its performance of the Agreement. The Contractor shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the state of Florida, Palm Beach County and the federal government.

The Contractor further acknowledges and agrees to provide the Town with all information and documentation that may be requested by the Town from time to time regarding the solicitation, selection, treatment, and payment of approved subcontractors, suppliers, and vendors in connection with this Agreement.

21. MINIMUM WAGE REQUIREMENTS

The Contractor shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this Agreement. The following wage decision shall apply:

General Decision Number: FI20240130 01/05/2024

Superseded General Decision Number: FL20230130

State: Florida

Construction Type: Heavy

County: Palm Beach County in Florida

22. SCOPE OF WORK

W. Ilex Park Improvements – Phase 2

SCOPE OF WORK

Contractor Mobilization:

- Park is to remain open. Contractor to provide barricades / cones / caution ribbon as required to provide maintenance of pedestrian traffic during construction operations.
- Contractor shall secure building permit before commencing with work; contractor with assistance from Town of Lake Park staff, will prepare project permit package.
- Contractor shall provide on-site port-o-let (or equal) sanitary facilities for workers.
- Project site has standard duty 120-V electrical outlet for use by contractor.
- There is no potable water available on-site.
- This project is partially funded by a Federal Community Development Block Grant, therefore, Davis Bacon wage rates will apply.
- Contractor will be required to submit weekly Certified Payrolls for the duration of the project.
- Contractor will be required to provide and maintain the following Job-Site Posters:
 - 1 WH-1312 Poster
 - 2 Copy of Applicable Wage Decision for Project
 - 3 Workers Rights Poster
 - 4 Contractors Contact Information

Site Fencing:

- Furnish labor, materials, and equipment required for the removal of the existing chain-link fencing both at the park perimeter and around the electrical / irrigation pump equipment. Removal includes fencing, rails, and posts with related concrete footings.
- Contractor to dispose of fencing materials off-site

NOTE: The Town of Lake Park would like to retain the existing fencing mesh. The contractor shall remove the existing fencing mesh, roll it up and place it at a designated location on the W. Ilex Park site. The Town will pick it up.

- Furnish labor, materials and equipment required for the installation of new black vinyl coated chain-link fencing wire, including new horizontal upper rail & lower tension cable, new, new corner bracing and all new attachment and connecting hardware.
- Fencing Length: Perimeter Fence: XX lft
 Electric / Pump Equipment Enclosure Fence: XX lft

NOTE: Contractor to verify and bid from confirmed measurements

- Fencing Height: Perimeter Fence 4'-0" high
 Electric / Pump Equipment Enclosure: 6'-0" high
- New Gates: Main Entrance Gates: 10'-0" wide x 4' high
 Service Gates: 10'-0" wide x 4' high
 Pedestrian Entry Gates: 6'-0" wide x 4' high
 Electric / Pump Enclosure Gates: 3'-0" wide x 6'-0" high

- New Line Posts: 2.5" x SS40 steel pipe (BLK)
- New Support rails: 1 5/8" o.d. x SS40 steel pipe (BLK).
- New Fencing Mesh: 2" x 8 gauge "Black Vinyl Coated"
(vinyl coated over zinc-coated steel wire with KK Selvage (knuckle – knuckle)).

Electrical Lighting and Component Up-grades:

- Refer to Electrical Engineering Design Plans as prepared by Bildworx Design.
(Bildworx is the Town of Lake Park Electrical Engineering Consultant for this project)
- Contractor shall secure electrical permit as part of the overall building permit application for this project. Electrical design plans are to be used for the electrical permit plan submittal.
- Contractor shall furnish all labor, materials and equipment to complete the electrical work as indicated on the Electrical Engineering Plans.
- Contractor shall provide fixture submittals for Town review and approval before purchase.
- Coordinate final location of electrical light fixtures with Owner representative

Plans, Sketches and Related Documents that are included as part of this agreement:

- EXHIBIT A – Scope of Work
- EXHIBIT B – Signed & Sealed Survey of W. Ilex Park
- EXHIBIT C – Site Plan showing limits of fence replacement
- EXHIBIT D – Photos of Existing Fencing
- EXHIBIT E – Required Bid Forms
- EXHIBIT F – Not Used
- EXHIBIT G – Signed and Sealed Engineering Plans of Proposed Electrical Lighting and Improvements
- EXHIBIT H(1) – Federal Forms – Part One
- EXHIBIT H(2) – Federal Forms – Park Two
- EXHIBIT I – Applicable Wage Decision (FL20240130)
- Bid Proposal as submitted by Mangonia Construction Group, LLC in response to ITB #107-2024

23. GENERAL COMPLIANCE

The contractor shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the US Housing and Urban Development regulations concerning Community Development Block Grants (CDBG), including subpart K of these regulations, except that (1) the contractor does not assume the County's environmental responsibilities described in 24 CR 570.604 and (2) the contractor does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

24. ENTIRE CONTRACT

This Contract, the Invitation to Bid (ITB), including all exhibits, embodies the entire Contract and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior contemporaneous contract and understandings oral or written, relating to said subject matter. This Contract may only be modified by written amendment executed by the Town and the Contractor.

25. PUBLIC RECORDS

The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- a. Keep and maintain public records required by the Town to perform the service.
- b. Upon the request of the Town's custodian of public records, provided the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- c. Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the term of this Agreement, and following completion of this Agreement if the Contractor/Vendor does not transfer the records which are part of this Agreement to the Town.
- d. Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the Contractor/Vendor; or keep and maintain the public records associated with the services provided for in the Agreement. If the Contractor/Vendor transfers all public records to the Town upon completion of the term of the Agreement, the Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential from public records disclosure. If the Contractor/Vendor keeps and maintains public records upon completion of the term of the Agreement, the Contractor/Vendor shall meet all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town,

upon request from the Towns custodian of public records, in a format that is compatible with the information technology systems of the Town.

- e. IF THE CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR/VENDOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

IN WITNESS WHEREOF, the parties hereto have made and execute this Agreement as of the day and year last execute below.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, MMC
Town Clerk

By: _____
Roger D. Michaud, Town Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this 15th day of May, 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida
Mangonia Construction Group, LLC

Officer of Mangonia Construction: _____

Title: President

Date: 5/7/24

FLORIDA INDIVIDUAL ACKNOWLEDGMENT
F.S. 117.05(13)

State of Florida

County of St. Lucie }

The foregoing instrument was acknowledged before me by means of

☒ Physical Presence,

— OR —

☐ Online Notarization,

this 7th day of May, 2024, by
Date Month Year

Gabriel A Mashraghi
Name of Person Acknowledging

Catherine Jimenez
Signature of Notary Public — State of Florida

Catherine Jimenez
Name of Notary Typed, Printed or Stamped



Place Notary Seal Stamp Above

☐ Personally known

☒ Produced Identification

Type of Identification Produced: FLDL
M262 281 90 182 0

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Construction Services Agreement Westflex para

Document Date: 5/7/24 Number of Pages: 10

Signer(s) Other Than Named Above: — NO OTHER SIGNERS —

EXHIBIT E

BID DOCUMENTS

TOWN OF LAKE PARK

**535 Park Avenue Lake
Park, FL 33403**



PROJECT:

West Ilex Park

Improvements – PHASE 2

Corner of W. Ilex Drive and 8th Street

Lake Park, FL 33403

Invitation to Bid: #107-2024

EXHIBIT E

Required Bid Forms

BID SUBMITTAL SIGNATURE PAGE

West Ilex Park Improvements – Phase 2
REBID
Bid No. 107-2024

Instructions: This form constitutes item 'b' of Part I. Include this form, along with all other forms identified below in your response to this ITB.

Required documents attached?

(checklist)

PART 1

- Bid Submittal Page (signed) ☒
- Acknowledgement of Addenda ☒
- Schedule of Bid Items ☒
- Conflict of Interest Disclosure Form ☒
- Notification of Public Entity Crimes Law ☒
- Drug-Free Workplace ☒
- Truth-in-Negotiation Certificate ☒
- List of References ☒
- List of Subcontractors, if applicable ☒
- Non-Collusion Affidavit – *Federal Form* ☒
- Anti-Kickback Affidavit – *Federal Form* ☒
- Certification of Eligibility of General Contractor – *Federal Form* ☒
- Certification of Non-Segregated Facilities – *Federal Form* ☒
- Workforce Projection – *Federal Form* ☒
- Certification Regarding Debarment ☒

RECEIVED

PART 2

- Certificate of Insurance (per specification) ☒
- Copies of all licenses, certifications, business tax receipts ☐
- Bid bond (per Section 1), if applicable ☐
- Clarifications / Exceptions ☐

NOT APPLICABLE
NO EXCEPTIONS

NAME OF FIRM: Mangonia Construction Group LLC

ADDRESS: 700 S. Rosemary Ave Ste
West Palm Beach, FL 33401

PHONE #: 561-346-5722

FAX #: _____

E-MAIL: gm7771@gmail.com

Statement by Bidder: "I HAVE REVIEWED ALL PLANS, MANUALS, SPECIFICATIONS, AND ALL OTHER INFORMATION CONTAINED WITHIN THIS SOLICITATION, AND UNDERSTAND ALL REQUIREMENTS"

AUTHORIZED SIGNATURE: _____

NAME & TITLE (TYPED or PRINTED): Gabriel Mashraghi, President

ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

List below the dates of issue for each addendum received in connection with this Solicitation:

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

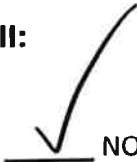
Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

Addendum #9, Dated _____

Addendum #10, Dated _____

PART II:

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

Firm Name: Mangoni Construction Group LLCSignature: [Handwritten Signature]Name and title (Print or Type): Gabriel MashrafiDate: 4/8/24

SCHEDULE OF BID ITEMS
WEST ILEX PARK IMPROVEMENTS – PHASE 2

ITB # 107-2024

BID AMOUNT EXTENDED COSTS

1	INDEMFICATION	1	L.S.	\$ <u>100.00</u>
2	GENERAL CONDITIONS: Project Management, Mobilization, Documents for Permitting, MOT, Temporary Protections, Product Submittals, Licenses & Insurances, Warranties, Close-out Documents, etc.	1	L.S.	\$ <u>\$13,854.00</u>
3	PERFORMANCE AND PAYMENT BONDS (if required) (only applicable if proposed BASE BID price exceeds \$100,000.00)	1	L.S.	\$ <u> </u>
4	NEW FENCING AND GATES – Remove existing fencing and gates and replace with new	1	L.S.	\$ <u>40,484.56</u>
5	ELECTRIC WORK New electric work as per plans, including furnish / install of new lighting Bollard lights and post lights.	1	L.S.	\$ <u>7,833.95</u>
6	PROJECT CONTINGENCY (Allowance amount to be used at the discretion of the owner Any unused allowance shall be returned to the owner)	1	Allowance	\$ <u>5,000.00</u>
7	BUILDING PERMIT (Town of Lake Park) (Allowance amount to be used at the discretion of the owner Any unused allowance shall be returned to the owner)	1	Allowance	\$ <u>2,000.00</u>

BASE BID ITEMS 1 THRU 7

\$ 69,272.51

Numeric Amount

Written Amount

\$ Sixty-nine thousand, two hundred and seventy-two
Written Amount and .51/100 cents.

The number of days within which, or the date by which, the Work is to be completed (the Contract Time) is currently set at 75 calendar days to substantial completion, plus 15 days to final completion from the date of contract time commences (90 days' total contract time).

Submitted by: Gabriel Moshkraghi Title: President
Signature of Firm Representative

Name of Firm: Mangonia Construction Group LLC

Firm Address: 700 S Rosemary Ave Ste 204 West Palm Beach, FL 33401

Date: 4/10/24 E-mail Address: gm7771@gmail.com

Firm Telephone No.: 561-346-5722

CONFLICT OF INTEREST DISCLOSURE FORM

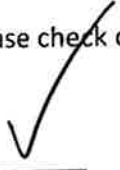
The award of this contract is subject to the provisions of Chapter 112, Florida Statutes. All Proposers must disclose within their Proposal: the name of any officer, director, or agent who is also an employee of the Town of Lake Park.

Furthermore, all Proposers must disclose the name of any Town employee who owns, directly, or indirectly, an interest of more than five percent (5%) in the Proposer's firm or any of its branches.

The purpose of this disclosure form is to give the Town the information needed to identify potential conflicts of interest for evaluation team members and other key personnel involved in the award of this contract.

The term "conflict of interest" refers to situations in which financial or other personal consideration may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any Town duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:



_____ To the best of my knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for the Proposal.

_____ The undersigned firm, by attachment to this form, submits information that may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this Proposal.

Acknowledged by:

Mangonia Construction Group LLC

Firm Name

Signature

Gabriel Mashragh:

Name and title (Print or Type)

4/8/24

Date


NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, Florida Statutes, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a 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 or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-vendor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Mangonia Construction Group LLC

Firm Name



Signature

Gabriel Mashraghi, President.

Name and Title (Print or Type)

4/8/24

Date

DRUG-FREE WORKPLACE

Mangonia Construction Group LLC is a drug-free workplace and has a
(Company Name)

Substance abuse policy in accordance with and pursuant to Section 440.102, Florida Statutes.

Acknowledged by:

Mangonia Construction Group LLC
Firm Name

GMI
Signature

Gabriel Mashraghi, President
Name and title (Print or Type)

4/8/24
Date

TRUTH – IN – NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreements and (ii) that it has not paid or agreed to pay any person, company, corporation, individual or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

This document must be executed by a Corporate Officer.

By: Gabriel Mashrogh

Title: President

Date: 4/8/24

LIST OF REFERENCES

Following are references from agencies/companies/individuals in which your company has provided similar services within the last 5 years:

REFERENCE #1

Company/Agency Name: Ibex Tech
 Address: 12355 SW 129th Ct Unit 103
Miami, FL
 Point of Contact: Ed Perez
 Phone Number: 305 - 878 - 2598
 Fax Number: _____
 E-mail: Ed@ibextechcorp.com

REFERENCE #2

Company/Agency Name: ACX Services LLC
 Address: 3800 Crystal Lake Dr
Apt 504 Deerfield Beach, FL
 Point of Contact: _____
 Phone Number: 954 - 588 - 0189
 Fax Number: _____
 E-mail: acxservicesinc@gmail.com

REFERENCE #3

Company/Agency Name: Bart Tile Installation LLC
 Address: _____
 Point of Contact: _____
 Phone Number: 561 - 425 - 2898
 Fax Number: _____
 E-mail: bartjp80@gmail.com

LIST OF SUBCONTRACTORS AND PRIME VENDORS

The following are the subcontractors and prime vendors anticipated to be used if your company is awarded the Contract. Please note that all changes to this list must first be approved in writing by the TOWN OF LAKE PARK, Project Manager.

<u>NAME OF COMPANY</u>	<u>ADDRESS OF COMPANY</u>	<u>PHONE/CONTACT</u>
1) Fence Crafters	1750 N. Florida Nemo Rd WPD, FL	561-848-6220 / Mike
2) Ibex Tech Corp	12355 SW 129th Ct Unit 103 Miami FL	786-242-4930 / Ed
3)		
4)		
5)		

PALM BEACH COUNTY DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

BEFORE ME, the undersigned authority, personally appeared Gabriel Mashraghi, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

- (1) He is president of Nargaria Construction Group LLC, the Bidder that has submitted a Bid to perform work for the following project:

Contract #: 102-2024 Project Name: West Ilex Park Improvement - Phase 2

- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Palm Beach County or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature: Gabi

STATE OF FLORIDA

COUNTY OF St. Lucie

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or ☐ online notarization, this 09 day of 04 2024 by

Gabriel Mashraghi, who is ☐ personally known to me or ☒ who has produced FL-DL as identification.

NOTARY SEAL:



Notary Signature: Jennifer Perez Barreras

Notary Name: Jennifer Perez Barreras

Notary Public-State of Florida

Commission No. 0610712027

PALM BEACH COUNTY DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT
ANTI-KICKBACK AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Gabriel Mastrogi
 who, after being by me first duly sworn, deposes and says:

(1) I am President of Mangonia Construction Group LLC, the undersigned
 that has submitted a proposal to perform work for the following project:

Contract #: 107-2024 Project Name: West Ilex Park Improvements - Phase 2

(2) I, the undersigned, hereby depose and say that no portion of the sum proposal in connection
 with the work to be performed at the property identified above will be paid to any employee of
Palm Beach County or, Mangonia Construction Group LLC as a commission, kickback, reward
 or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

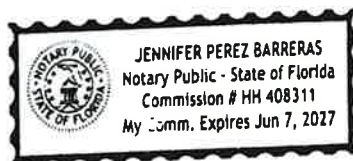
Signature: *[Signature]*

STATE OF FLORIDA
 COUNTY OF St. Lucie

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or ☐ online
 notarization, this 09 day of 04 2024 by

Gabriel Mastrogi who is ☐ personally known to me or ☒ who has produced
FLDL as identification.

NOTARY SEAL:



Notary Signature: *Jennifer Perez Barreras*

Notary Name: Jennifer Perez Barreras
 Notary Public-State of Florida

Commission No. 06/07/2027

PALM BEACH COUNTY DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT

CERTIFICATION OF ELIGIBILITY OF GENERAL CONTRACTOR

BEFORE ME, the undersigned authority, personally appeared Gabriel Masbraghi, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that

- (1) He/she is the President of Nangonla Construction Group LLC, hereinafter referred to as the "General Contractor"; with State of FL Contractor License or Palm Beach County Contractors Certificate of Competency

License/ Certification No: CGC1529527 Expiration Date: 8/24
who submitted a proposal to perform work for the following project:

Contract #: 107-2024 Project Name: West Ilex Park Improvements - Phx 2

- (2) He/she is fully informed that the Proposal submitted for work to be performed under the above mentioned contract, is being funded, in whole or in part, by a Federally-assisted or insured contract; and
- (3) The General Contractor nor any of its officers, partners, owners or parties of interest is not named on the current General Services Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs prior to award of the contract; and
- (4) The General Contractor acknowledges that should the contractor be subsequently found ineligible after award of the contract, its Construction Contract shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration for its action; and
- (5) The General Contractor acknowledges the responsibility of informing all of its subcontractors that this contract is being funded, in whole or in part, by a Federally-assisted or insured contract; and
- (6) The General Contractor acknowledged the responsibility that all of its subcontractors are to sign a "Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Participant" as a part of its contract with such subcontractors, and that the "General Contractor" will retain such certifications in its files. Furthermore, should the subcontractor be subsequently found ineligible after award of the Construction Contract, its contract with the "General Contractor" shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration, for its action.

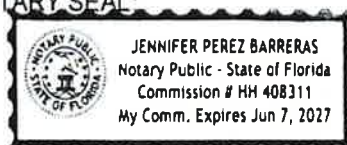
Signature: [Signature]

STATE OF FLORIDA
COUNTY OF St. Lucie

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or ☐ online notarization, this 09 day of 04 20 24 by

Gabriel Masbraghi, who is ☐ personally known to me or ☒ who has produced FL-DL as identification.

NOTARY SEAL:



Notary Signature: [Signature]

Notary Name: Jennifer Perez Barreras

Notary Public-State of Florida

Commission No. 06/07/2027

PALM BEACH COUNTY

DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT

CERTIFICATION OF NONSEGREGATED FACILITIES

The undersigned certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control where segregated facilities are maintained. The undersigned certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location under his/her control where segregated facilities are maintained. The undersigned agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this proposal. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The undersigned agrees that (except where he/she has obtained identical certification from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he/she will retain such certifications in his/her files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Project Name: West Ilex Park Improvements - Phase 2

Company Name and Address: Mangonia Construction Group LLC
700 S Rosemary Ste 204
West Palm Beach, FL 33401



 Signature

Gabriel Moshayri, President

 Name and Title

4/8/24

 Date

PALM BEACH COUNTY

DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT

WORKFORCE PROJECTION**PROJECT NAME: Ilex Park Improvements Phase II**

Instructions: Consult the Project Wage Decision/s and check all the work classifications that you anticipate will be working on this project including the prime contractor's work force and all subcontractors' work forces.

OPERATORS

- ☐ Asphalt Paver
☐ Backhoe
☐ Backhoe Loader Combo
☐ Bobcat/ Skid Steer/ Skid Loader
☐ Boom
☐ Boring Machine
☐ Broom/ Sweeper
☐ Bulldozer
☐ Concrete Finishing Machine
☐ Concrete Pump
☐ Concrete Saw
☐ Crane
☐ Crane, all tower cranes
☐ Crane with boom length 150 ft and over
☐ Crane with boom length less than 150 ft
☐ Crane, all Cranes over 160 Ton Capacity
☐ Crane – all Cranes over 15 Ton Capacity
☐ Curb Machine
☐ Distributor
☐ Drill
☐ Excavator
☐ Forklift
☐ Gradall
☐ Grader/Blade
☐ Grinding/ Grooving Machine
☐ Highway/ Parking Lot Striping – Striping Machine Operator
☐ Highway/ Parking Lot Striping – Spray Nozzleman
☐ Loader
☐ Mechanic (type: _____)
☐ Milling Machine
☐ Oiler
☐ Paver – Asphalt, Aggregate, Concrete
☐ Piledriver
☐ Post Driver (Guardrail/ Fences)
☐ Roller
☐ Scraper
☐ Screed
☐ Trackhoe
☐ Tractor
☐ Trencher

DRIVERS

- ☐ Truck Driver, Distributor Truck
☐ Truck Driver, Dump Truck
☐ Truck Driver, Flatbed Truck
☐ Truck Driver, Lowboy Truck
☐ Truck Driver, Slurry Truck
☐ Truck Driver, Vactor Truck
☐ Truck Driver, Water Truck
☐ Truck Driver, Off the Road Truck

OTHER WORK CLASSIFICATIONS

- ☐ Asbestos Worker/ Heat & Frost Insulator
☐ Bricklayer
☐ Carpenter, includes Form Work
☐ Carpenter, excludes Drywall Hanging

- ☐ Carpenter – includes Acoustical Ceiling Installation, Drywall Finishing/ Taping, Drywall Hanging, Form Work, Metal Stud Installation
☐ Carpenter – Piledriverman
☐ Cement Mason/Concrete Finisher
☐ Drywall Finisher/Taper
☐ Drywall Hanger
☐ Elevator Mechanic
☐ Fence Erector
☐ Glazier
☐ Highway/ Parking Lot Striping - Painter
☒ Installer – Guardrail
☒ Ironworker – Ornamental, Reinforcing, Structural
☐ Life Setter
☒ Laborer – Traffic Control Specialist, incl. placing of cones/ barricades/ barrels – Setter, Mover, Sweeper
☐ Laborer – Asphalt, incl Raker, Shovelers, Spreader and Distributor
☐ Laborer - Common or General
☐ Laborer – Flagger
☐ Laborer – Grade Checker
☐ Laborer - Landscape and Irrigation
☐ Laborer – Mason Tender – Brick
☐ Laborer – Mason Tender – Cement/ Concrete
☐ Laborer - Common or General, including Cement Mason Tending
☐ Laborer – Plaster Tender
☐ Laborer – Pipelayer
☐ Laborer - Power Tool Operator (Hand Held Drills/ Saws, Jackhammer and Power Saws only)
☐ Laborer – Roof Tearoff
☐ Painter - brush, roller & spray
☐ Electrician
☒ Electrician (includes Low Voltage Wiring)
☐ HVAC Mechanic (Installation of HVAC Unit Only, Excludes Installation of HVAC Pipe and Duct)
☐ Pipefitter (includes HVAC pipe, Unit and Temperature Controls Installations)
☐ Sheet Metal Worker (includes HVAC duct installation, excludes Metal Roof installation)
☐ Plumber
☐ Roofer (includes Built Up, Modified Bitumen, and Shake & Shingle Roofs, Excludes Metal Roofs)
☐ Roofer – Metal Roof
☐ Sign Erector
☐ Sprinkler Fitter (fire sprinklers)
☐ Welder
☐ Additional Classifications (must specify below):

Submitted by: Gabriel Moshrogi Company Name: Magonia Construction Group LLC Date: 4/8/24

PALM BEACH COUNTY DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION-LOWER TIER PARTICIPANT

(SUBCONTRACTORS)

Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Covered Transactions pursuant to 24 CFR, Code of Federal Regulations, Part 24.510(b) and HUD Handbook 1300.13 REV.1:

By signing and submitting this proposal, the prospective lower-tier participant, certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Further, I, we, provide the certification set out below:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I, we, knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to which this proposal is submitted if at any time I, we, learn that my/our certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I, we, will not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation. In this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we, will include this Certification, without modification, in all lower tier covered transactions and in all solicitations for lower-tier covered transacting.

Project Name: West Ilex Park Improvements - Phase 2

Subcontractor Name: Mangonia Construction Group LLC

Address: 700 S Rosemary Ave Ste 204 West Palm Beach, FL

State of FL Contractor License or Palm Beach County Contractors Certificate of Competency

License/ Certification No: CGC1529527 Expiration Date: 8/31/24

By:

Gabriel Moshaghi / President
Name and Title

[Signature]
Signature

4/8/24

Date

INCLUDE PROOF OF EXISTING INSURANCE.

FLORIDA FACE PAGE

Insured's Name: Mangonia Construction Group
Policy Dates From: 10/18/2023
Surplus Lines Agent's Name: Jeff Aumick

Policy #: NPP8982160
To: 10/18/2024

Surplus Lines Agent's Address: 477 South Rosemary Avenue Suite 215 West Palm Beach FL 33401

Surplus Lines Agent's License #: A009843

Producing Agent's Name: Steve Etimos

Producing Agent's Physical Address: 500 Montauk Highway, Suite N, West Islip, NY 11795

"THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER."

"SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY."

Policy Premium: \$2,500.00

Policy Fee: \$200.00

Inspection Fee: \$125.00

Stamp Fee: \$1.70

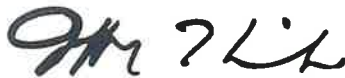
Tax: \$139.56

Citizen's Assessment: N/A

EMPA Surcharge: N/A

FHCF Assessment: N/A

Surplus Lines Countersignature: _____



- ☐ **"THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."**
- ☐ **"THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."**

PLEASE CUT OUT CARD BELOW AND RETAIN FOR FUTURE REFERENCE

<p>STATE OF FLORIDA DEPARTMENT OF FINANCIAL SERVICES DIVISION OF WORKERS' COMPENSATION</p> <p>CONSTRUCTION INDUSTRY EXEMPTION</p> <p>CERTIFICATE OF ELECTION TO BE EXEMPT FROM FLORIDA WORKERS' COMPENSATION LAW</p> <p>EFFECTIVE DATE: 10/12/2023 EXPIRATION DATE: 10/11/2025</p> <p>PERSON: GABRIEL MASHRAGHI EMAIL: GABRIEL@MANGONACG.COM</p> <p>FEIN: 852076574</p> <p>BUSINESS NAME AND ADDRESS:</p> <p>MANGONIA CINSTRUCTION GROUP LLC</p> <p>225 33RD COURT WEST PALM BEACH, FL 33407</p> <p><small>This certificate of election to be exempt is NOT a license issued by the Department of Business and Professional Regulation. To determine if the certificate holder is required to have a license to perform work or to verify the license of the certificate holder, go to www.myfloridalicense.com.</small></p> <p>DFS-FZ-DWC-252 CERTIFICATE OF ELECTION TO BE EXEMPT RULE 68L-9.012, F.A.C. REVISED 01/2023</p>	<p style="text-align: center;">IMPORTANT</p> <p>FOLD HERE</p> <p>Pursuant to subsection 440.05(13), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter.</p> <p>Pursuant to subsection 440.05(11), F.S., Certificates of election to be exempt issued under subsection (3) apply only to the corporate officer named on the notice of election to be exempt.</p> <p>Pursuant to subsection 440.05(12), F.S., notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a certificate at any time for failure of the person named on the certificate to meet the requirements of this section.</p> <p>E01806070</p> <p>QUESTIONS? (850) 413-1609</p>
---	--

INCLUDE PROOF OF PROPER LICENSING, CERTIFICATIONS, BUSINESS TAX RECEIPTS (AS APPLICABLE TO PERFORM THE REQUIRED SERVICES).

Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

MASHRAGHI, GABRIEL ADEL

MANGONIA CONSTRUCTION GROUP LLC
225 33RD COURT
WEST PALM BEACH FL 33407

LICENSE NUMBER: CGC1529527

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



INSERT BID SECURITY HERE

**(INCLUDE PROOF OF BONDING CAPABILITIES FOR PAYMENT AND PERFORMANCE,
IF REQUIRED FOR THIS PROJECT)**

NOTE: Attorney-in-fact who signs Bid Bonds or Contract Bonds must file with such bond a certified copy of their Power of Attorney to sign such bonds.

CLARIFICATIONS/EXCEPTIONS

Please list any clarifications of your bid in this section, as well as any exceptions you may have.



Office of the
Town Clerk

April 22, 2024

NOTICE OF INTENT TO AWARD

Pursuant to Town of Lake Park, notice is provided as follows:

INVITATION TO BID (ITB) #107-2024

W. Ilex Park Improvements – Phase 2

Bid Opening Date and Time: Wednesday, April 17, 2024 at 2:00 pm local time.

The Town of Lake Park has completed its evaluation of ITB #107-2024 and intends to award the West Ilex Park Improvements - Phase 2 contract to:

Mangonia Construction Group LLC

- 1) For the submitted Total Bid Amount of \$ 69,272.51
Pricing breakdown includes \$62,272.51.00 for W. Ilex Park Improvement work, plus a \$5,000.00 Project Contingency Allowance, plus a \$2,000.00 Permit Fee Allowance, for a total bid amount of \$69,272.51
- 2) This Notice is conditioned upon and subject to the Town of Lake Park's reservation of rights as contained in the ITB Documents and is subject to approval by the Lake Park Town Commission.

Sincerely,
Town of Lake Park


Jaime Morales
Director of Public Works

Issued by: Town of Lake Park, Office of the Town Clerk

Date: _____

Signed By: _____

Laura Weidgans
Deputy Town Clerk

535 Park Avenue
Lake Park, FL 33403
Phone: (561) 881-3311
Fax: (561) 881-3314

www.lakeparkflorida.gov



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Baxter & Woodman, Inc. for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner
 Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park, ou=Assistant Town Manager/Human Resources Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:05:24 -04'00'

Cost of Item:	<u>N/A</u>	Funding Source:	<u>N/A</u>
Account Number:	<u>N/A</u>	Finance Signature:	<u>N/A</u>
Advertised:	<u>N/A</u>	Newspaper:	<u>N/A</u>
Date:	<u>N/A</u>		

Attachments:

1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – Baxter & Woodman

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Baxter & Woodman for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 27-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH BAXTER AND WOODMAN, INC., FOR CONTINUING PROFESSIONAL ELECTRICAL, SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) AND GEOGRAPHICAL INFORMATION SYSTEMS, (GIS) SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Baxter and Woodman, Inc. was a top ranked firm for Category F, Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services; and

WHEREAS, in its response to the RFP, Baxter & Woodman, Inc. represented to the TOWN that it is qualified and able to provide the services described in Category F; and

WHEREAS, the parties have agreed to a three-year agreement with Baxter & Woodman, Inc. for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Baxter & Woodman, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with Baxter & Woodman, Inc. to provide Continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this seventeenth (17) day of April 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and Baxter & Woodman Engineering, 1601 Forum Place, Suite 400, West Palm Beach, FL 33401 (the "Consultant"), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm's proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category F (Electrical, Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Categories F, and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the

benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide the professional services for the following disciplines:

Electrical, SCADA, and GIS services.

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and

approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 10.2 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.

- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.
- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may

perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to

this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Baxter & Woodman, Inc.

By: 

Its: Executive Vice President

Rebecca Travis
Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:
 - **Electrical**
 - **Supervisory Control and Data Acquisition (SCADA)**
 - **Geographical information systems (GIS)**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
 - f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:


Signature

Rebecca Travis

Written Name

Executive Vice President

Title

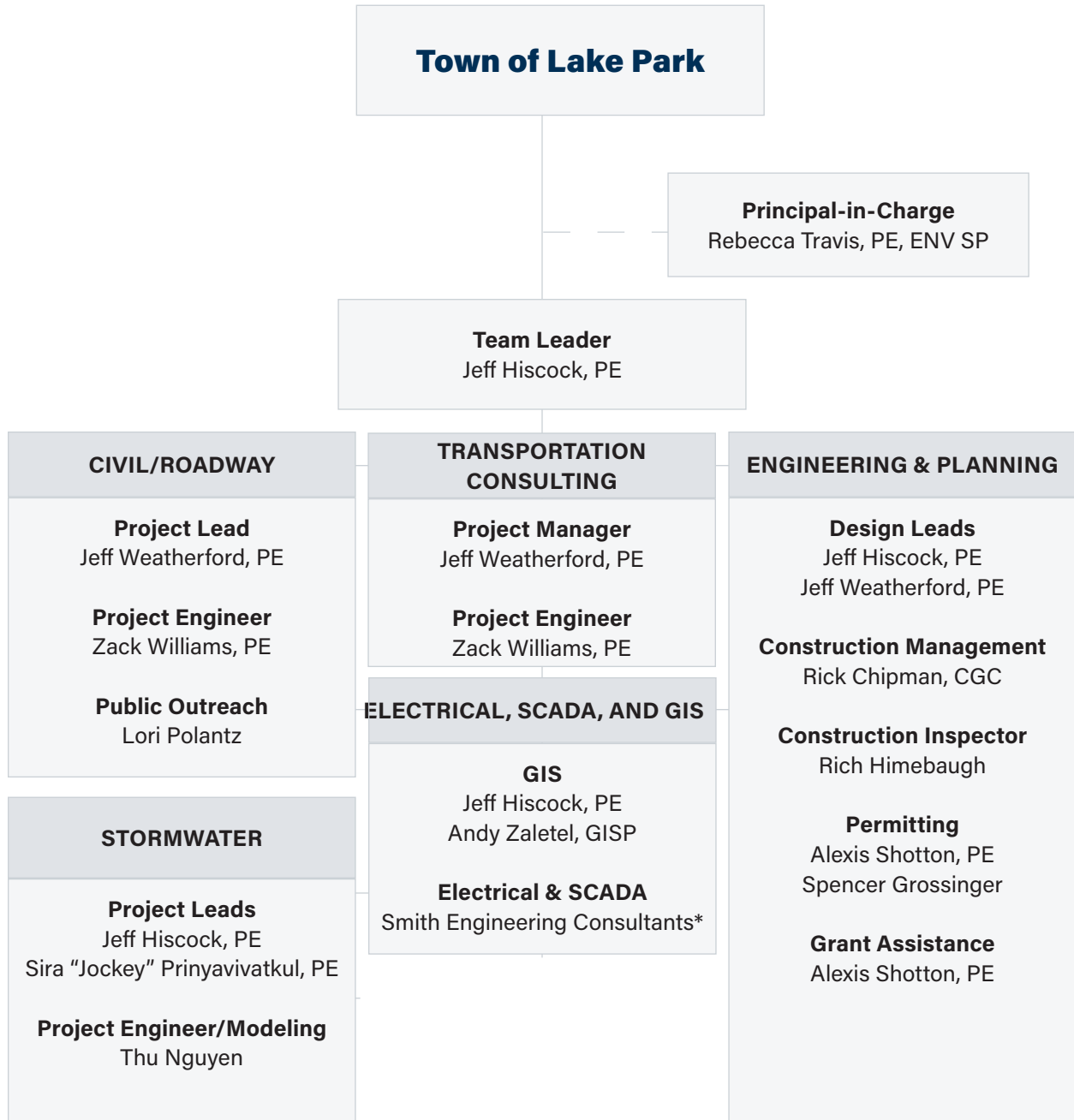
April 10, 2024

Date

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EXHIBIT B

PROPOSER'S ORGANIZATION CHART



* Subconsultants

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of _____. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C

(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT

Baxter & Woodman, Inc.		Multiplier: 2.78
Name	Title	Direct Labor Rate
Rebecca Travis	Executive Vice President	\$ 93.53
	Vice President	\$ 89.93
Jeff Hiscock, Jeff Weatherford	Engineer VII	\$ 86.33
Siri Prinyavivatkul	Engineer VI	\$ 82.73
Zack Williams	Engineer V	\$ 75.54
Jake Hurley	Engineer IV	\$ 70.14
Alexis Shotton	Engineer III	\$ 62.95
Spencer Grossinger	Engineer II	\$ 55.76
Emily Altman, Thu Nguyen	Engineer I	\$ 48.56
	Engineer Intern	\$ 28.78
Richard Chipman	Construction Manager II	\$ 71.94
	Construction Manager I	\$ 64.75
Richard Adams	Engineering Tech V	\$ 64.75
Richard Philbick	Engineering Tech IV	\$ 55.76
	Engineering Tech III	\$ 50.36
	Engineering Tech II	\$ 43.17
	Engineering Tech I	\$ 35.97
Daniel Sattler	Spacial Technology Manager	\$ 70.14
Andrew Zaletel	Spacial Technology Professional III	\$ 61.15
Henry Pelesh, Brandon Bywater	Spacial Technology Professional II	\$ 50.36
	Spacial Technology Professional I	\$ 46.76
	Production Manager	\$ 64.75
	Cadd Tech III	\$ 53.96
David Pham	Cadd Tech II	\$ 48.56
	Cadd Tech I	\$ 35.97
Lisa Alonzo	Admin Support I to IV	\$ 35.97
Lori Polantz	Communication Specialist I to IV	\$ 53.96

Smith Engineering Consultants, Inc.		Multiplier: 3.00
Name	Title	Direct Labor Rate
Larry Smith	Principal	\$ 68.33
Luther Fair	Engineer	\$ 58.33
Steve Hockman	Engineer	\$ 58.33
Frank Roth	Engineer	\$ 58.33
Lexi Smith	Engineer	\$ 58.33
	Asst. Engineer	\$ 45.00
Den Melnikoff	CADD Designer	\$ 31.67
	Clerical	\$ 23.33
	Expert Witness	\$ 116.67

EXHIBIT C

(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT**EXPENSE ITEMS**

ITEM	RATES
Personal Owned Vehicle Mileage	Reimbursed at the rate set by the US Internal Revenue Service
Company Owned/Leased Vehicles Usage	\$80.00 per day
Company Owned/Leased Vehicles Usage	\$40.00 per half day (minimum charge)
Traffic Counters	\$50 per day
Miovision Traffic Data Collection System	\$300 per setup plus \$24 per hour processing
Flow Meter	\$650 per month
Pressure Data Logger	\$50.00 per day per unit
Bathymetric Drone Boat	\$300 per day
Streetview Camera System	\$300 per day
Underwater Drone Vehicle	\$500 per day
Pavement Management Camera System	\$500 per day
Aerial Drone LiDAR	\$300 per day
Indoor LiDAR Unit (for Revit use)	\$700 per day
Standard Aerial Drone Video/Photo Collection	\$150 per day
Advanced Digital Fieldbook	\$1,500 per month
Digital Fieldbook	\$500 per month
Riegl LiDAR	\$500 per day
Sub-Consultant Costs	Invoice costs plus 7-1/2%

EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY: Insurance and Indemnification -** The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92 \end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: Baxter & Woodman. Inc.

Address: 1601 Forum Place

City West Palm Beach State: FL Zip: 33401

Signature:  Date: April 10, 2024
Rebecca Travis, P.E. Executive Vice President

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (M)
12/1
Item 7.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Holmes Murphy & Associates 2727 Grand Prairie Pkwy Waukegan IA 50263		CONTACT NAME: Beau Murray PHONE (A/C, No, Ext): 608-242-2558 E-MAIL ADDRESS: BMurray@holmesmurphy.com		FAX (A/C, No):
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: Valley Forge Insurance Company		20508
		INSURER B: The Continental Insurance Company		35289
		INSURER C: Continental Casualty Company		20443
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 1453821272 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			7017821337	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			7017833701	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			P7017835416	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	N/A	717818681	1/1/2024	1/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability Claims made form			AEH591900841	1/1/2024	1/1/2025	Per claim \$5,000,000 Aggregate \$10,000,000

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

Town of Lake Park, FL - MK00010

Town of Lake Park is an Additional Insured on General Liability and Automobile Liability as required by written contract with the insured, per policy terms and conditions.

The following supersedes the cancellation wording: Should the above described General Liability, Automobile or Workers' Compensation policies be cancelled before the expiration date, 30 Days written notice (10 Days for Non-Payment) will be delivered to the certificate holder.

CERTIFICATE HOLDER

CANCELLATION

Town of Lake Park 535 Park Avenue Lake Park FL 33403	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



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Calvin Giordano & Associates, Inc. for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner **Date** 2024.05.08 16:13:36 -04'00'

Digitally signed by Bambi McKibbon-Turner
DN: cn=Bambi McKibbon-Turner, o=Town of Lake
Park, ou=Assistant Town Manager/Human Resources
Director, email=bturmer@lakeparkflorida.gov, c=US
Date: 2024.05.08 16:13:36 -04'00'

Cost of Item:	<u>N/A</u>	Funding Source:	<u>N/A</u>
Account Number:	<u>N/A</u>	Finance Signature:	<u>N/A</u>
Advertised:	<u>N/A</u>	Newspaper:	<u>N/A</u>
Date:	<u>N/A</u>		

Attachments:

1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – Calvin Giordano & Associates

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Calvin Giordano & Associates, Inc. for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 28-05-24**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH CALVIN GIORDANO & ASSOCIATES, INC., FOR CONTINUING PROFESSIONAL LAND SURVEYING & MAPPING AND URBAN PLANNING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Land Surveying and Mapping and Urban Planning Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Land Surveying and Mapping and Urban Planning Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Calvin Giordano and Associates, Inc. was a top ranked firm for Category I & K, Professional Land Surveying and Mapping and Urban Planning Services; and

WHEREAS, in its response to the RFP, Calvin Giordano and Associates, Inc. represented to the TOWN that it is qualified and able to provide the services described in Category I & K; and

WHEREAS, the parties have agreed to a three-year agreement with Calvin Giordano and Associates, Inc. for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Calvin Giordano & Associates, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with Calvin Giordano and Associates, Inc. to provide Continuing Professional Land Surveying and Mapping and Urban Planning Services on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this first day of June, 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the “Town”) and Calvin Giordano & Associates, Inc., 1800 Eller Drive, Suite 600, Fort Lauderdale, FL 33316 (the “Consultant”), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm’s proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category I (Land Surveying and Mapping) and Category K (Urban Planning), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Categories I & K; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide professional services for the following disciplines:

Land Surveying and Mapping

Urban Planning

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.

- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all third-party claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. Deductible on E & O Coverage shall be no less than \$100,000.00 per claim. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

- 8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.
- 8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and completed work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town. Consultant shall not be responsible or liable in any manner for Town's use of unfinished work product or documents.
- 8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.
- 8.4 In no event shall either party be liable to the other for consequential, incidental or other indirect damages regardless of 1) the form of action under which sought, 2) whether the party has been made aware of the possibility of such damages and 3) whether the remaining remedies fail of their essential purpose.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 102 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.
- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Written consent shall not be unreasonably withheld or delayed. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.
- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town

Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related

to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney


STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Calvin Giordano & Associates, Inc.

By: David E Stambaugh  Digitally signed by David E Stambaugh
Date: 2024.04.19 09:53:33-04'00'

Its: Vice President _____

David Stambaugh, PE. _____
Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:
 - **Land Survey and Mapping**
 - **Urban Planning**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
 - f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:

David E Stambaugh

Digitally signed by David E Stambaugh
Date: 2024.04.19 11:32:11-04'00'

Signature

David Stambaugh, PE.

Written Name

Vice President of Professional Services

Title

4/19/2024

Date

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EXHIBIT B

PROPOSER'S ORGANIZATION CHART

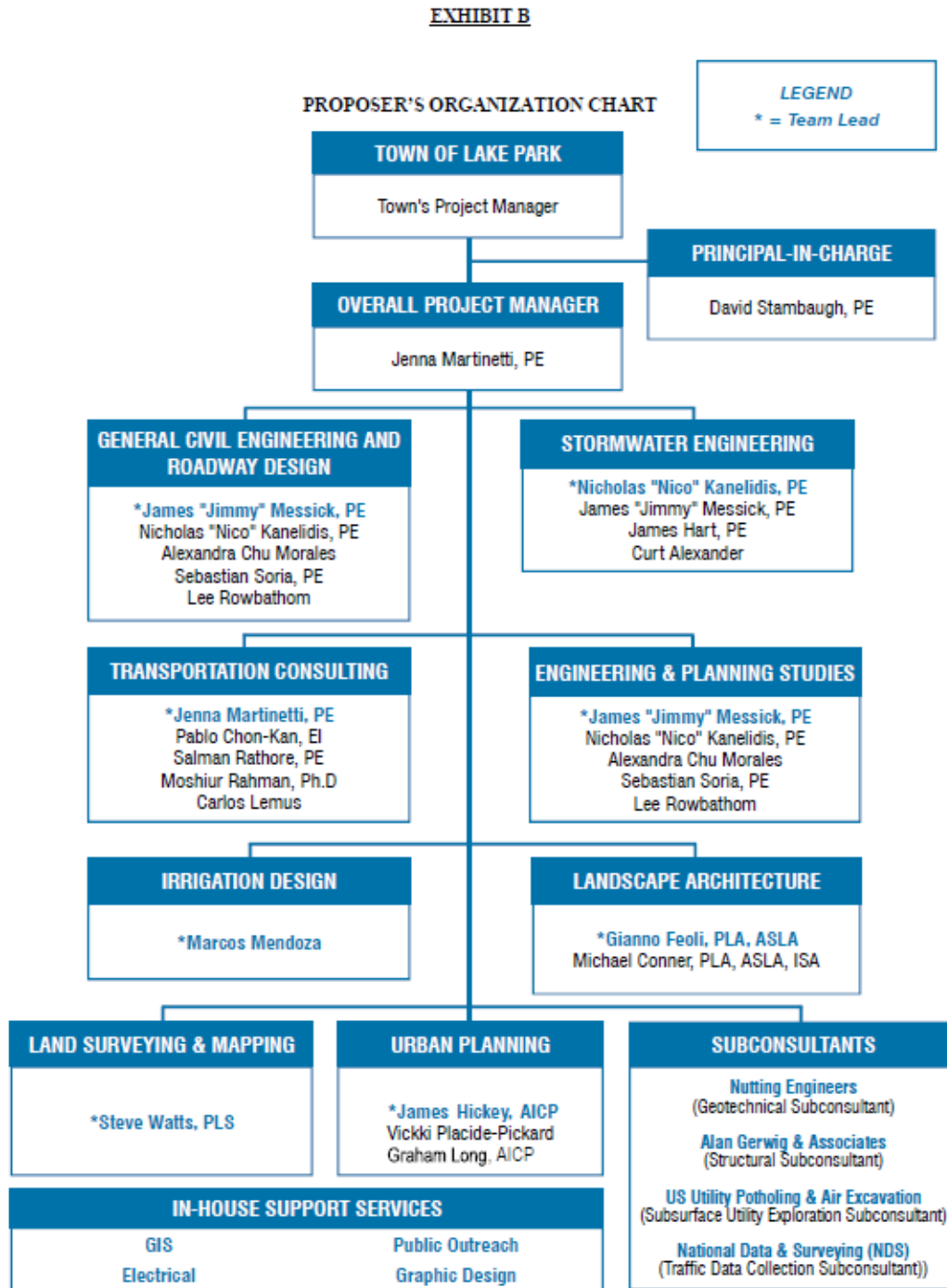


EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of _____. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C (continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT



Calvin, Giordano & Associates, Inc.
A SAFEbuilt[®] COMPANY

PROFESSIONAL FEE SCHEDULE

Building Code Services Civil Engineering / Roadway & Highway Design Coastal Engineering Code Enforcement Construction Engineering & Inspection (CEI) Construction Services Data Technologies & Development Electrical Engineering Engineering Environmental Services Facilities Management Grant Management & Writing Geographic Information Systems (GIS) Governmental Services Indoor Air Quality (IAQ) Landscape Architecture Planning Project Management Redevelopment & Urban Design Surveying & Mapping Transportation & Mobility Transportation Planning Water / Utilities Engineering Website Development	Principal	262.00	CONSTRUCTION	
	Contract Administrator	242.00	Director, Construction	234.00
	Project Coordinator	122.00	Senior Project Engineer (CEI)	210.00
	Executive Assistant / Clerical	90.00	Project Administrator (CEI)	158.00
			Construction Management Director	174.00
	ENGINEERING		Construction Manager	158.00
	Director, Engineering	234.00	Senior Inspector	130.00
	Sr. Project Manager	204.00	ITS Inspector	130.00
	Project Manager	186.00	Inspector	118.00
	Project Engineer	164.00	Inspector Aide	113.00
	Engineer	139.00	Construction Coordinator	122.00
	Jr. Engineer	122.00	Resident Compliance Specialist	118.00
	Senior CADD Tech	141.00		
	CADD Technician	120.00	GOVERNMENT SERVICES	
	Permit Administrator	114.00	Director, Government Services	234.00
	Engineering Plan Review	186.00	Director of Code Enforcement	183.00
			Director of Building Code	183.00
	LANDSCAPE ARCHITECT		Project Manager	186.00
	Director, Landscape Architect	234.00	Code Enforcement Field Supervisor	139.00
	Senior Landscape Architect/Urbanist	188.00	Code Enforcement Field Inspector	118.00
	Environmental Administrator	156.00	Building Official	144.00
	Environmental Specialist	130.00	Building Plans Reviewer	124.00
	Environmental Assistant	120.00	Building Inspector	118.00
	Landscape Architect/Urbanist	172.00	Permit Processor	90.00
	Senior CADD Tech	141.00	Special Magistrate Clerk	90.00
	CADD Technician	120.00	Engineering Plan Review	186.00
	Landscape Inspector/Arborist	130.00		
	Landscape Plan Reviewer	177.00	PLANNING	
	Jr. Landscape Architect/Urbanist	156.00	Director, Planning	234.00
	Landscape Designer	130.00	Planning Administrator	191.00
	Jr. Landscape Designer	115.00	Principal Planner	185.00
	Landscape Analyst	84.00	Planning Manager	185.00
			Senior Planner	158.00
	SURVEYING		Planner	133.00
	Director, Surveying	234.00	Assistant Planner	116.00
	Senior Registered Surveyor	185.00	Planning Technician	90.00
	Survey Crew	171.00	Grants Administrator	191.00
	Registered Surveyor	166.00	Grants Coordinator	133.00
	Survey Coordinator	133.00		
	CADD Technician	120.00	DATA TECH DEVELOPMENT	
	3D Laser Scanner	469.00	Director, Data Tech Dev.	234.00
	G.P.S Survey Crew	206.00	GIS Coordinator	185.00
			GIS Specialist	158.00
	EXPERT WITNESS		Multi-Media 3D Developer	141.00
	Principal/Associate	414.00	GIS Technician	122.00
	Registered Engineer/Surveyor	351.00	Sr. Applications Developer	234.00
	Project Engineer	287.00	Applications Developer	174.00
			Network Administrator	195.00
	INDOOR AIR QUALITY SERVICES		System Support Specialist	141.00
	Sr. Environmental Scientist	156.00	IT Support Specialist	106.00
	Environmental Scientist	130.00	Sr. Environmental Scientist	156.00
			Environmental Scientist	130.00

1800 Eller Drive
Suite 600
Fort Lauderdale, FL 33316
Tel: 954.921.7781
Fax: 954.921.8807

www.cgasolutions.com

In addition to the hourly rates listed above, charges will include direct out-of-pocket expenses such as reproduction, overnight mail, and other reimbursables billed at a multiplier of 1.25.

Effective April 1, 2024

FORT LAUDERDALE

MIAMI-DADE

WEST PALM BEACH

CLEARWATER / TAMPA

ESTERO

PORT ST. LUCIE

EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, \$2,000,000 annual aggregate. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY: Insurance and Indemnification -** The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\text{Rate of Change in CPI} = \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

$$= \text{Minimum of } (3.54\%, 5.00\%)$$

$$= 3.54\%$$

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

$$= 11.35 \times [1 + 0.0354]$$

$$= 11.75$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

$$= \text{Minimum of } (6.98\%, 5.00\%)$$

$$= 5.00\%$$

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

$$= 11.35 \times [1 + 0.05]$$

$$= 11.92$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and The Engenuity Group for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner

Digitally signed by Bambi McKibbon-Turner
DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
ou=Assistant Town Manager/Human Resources Director,
email=bturner@lakeparkflorida.gov, c=US
Date: 2024.05.08 16:19:08 -04'00'

Cost of Item: N/A

Funding Source: N/A

Account Number: N/A

Finance Signature: N/A

Advertised: N/A

Date: N/A

Newspaper: N/A

Attachments: 1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – The Engenuity Group

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with The Engenuity Group for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 29-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE ENGENUITY GROUP, FOR CONTINUING PROFESSIONAL ENVIRONMENTAL PLANNING AND STUDIES SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Environmental Planning and Studies Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Environmental Planning and Studies Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and The Engenuity Group was a top ranked firm for Category G, Professional Environmental Planning and Studies Services; and

WHEREAS, in its response to the RFP, The Engenuity Group represented to the TOWN that it is qualified and able to provide the services described in Category G; and

WHEREAS, the parties have agreed to a three-year agreement with The Engenuity Group for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with The Engenuity Group.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with The Engenuity Group to provide Continuing Professional Environmental Planning and Studies Services on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this seventeenth (17) day of April, 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the “Town”) and The Engenuity Group, 1280 North Congress Avenue, Suite 101, West Palm Beach, FL 33409 (the “Consultant”), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm’s proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category G (Environmental Planning and Studies), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Category G; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide the professional services for the following disciplines: Environmental Planning and Studies, services.

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and

approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 10.2 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.

- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily

and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come

before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties.
Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.

- 15.4 Upon the completion of the work and services to be performed pursuant to this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Engenuity Group, Inc.

By: Adam swaney

Its: Vice President

Adam Swaney

Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the field of Environmental Planning and Studies and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:

➤ **Environmental Planning and Studies**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
 - f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:

Adam swaney

Signature

Adam Swaney

Written Name

Vice President

Title

5/1/24

Date

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EXHIBIT B

PROPOSER'S ORGANIZATION CHART

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of _____. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C
(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT

(To Be Provided By the CONSULTANT)

Name	Title	Direct Labor Rate
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EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY: Insurance and Indemnification -** The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned}\text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92\end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: Adam Swaney , Engenuity Group

Address: 1280 N Congress Ave, Suite101

City WPB State: FL Zip: 33409

Signature: *Adam swaney* Date: 5/1/24

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Florida Technical Consultants, LLC for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner
 Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park, ou=Assistant Town Manager/Human Resources Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:21:49 -04'00'

Cost of Item:	<u>N/A</u>	Funding Source:	<u>N/A</u>
Account Number:	<u>N/A</u>	Finance Signature:	<u>N/A</u>
Advertised:	<u>N/A</u>	Newspaper:	<u>N/A</u>
Date:	<u>N/A</u>		

Attachments: 1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – Florida Technical Consultants, LLC

Please initial one:

Yes, I have notified everyone
Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Florida Technical Consultants, LLC for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 30-05-24**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH FLORIDA TECHNICAL CONSULTANTS, LLC., FOR CONTINUING PROFESSIONAL ELECTRICAL SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) AND GEOGRAPHICAL INFORMATION SYSTEMS (GIS) SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Florida Technical Consultants, LLC was a top ranked firm for Category F, Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services; and

WHEREAS, in its response to the RFP, Florida Technical Consultants, LLC represented to the TOWN that it is qualified and able to provide the services described in Category F; and

WHEREAS, the parties have agreed to a three-year agreement with Florida Technical Consultants, LLC for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Florida Technical

Consultants, LLC

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with Florida Technical Consultants, LLC to provide Continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS) Services on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this seventeenth (17) day of December 2024, by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and Florida Technical Consultants, LLC 240 Woolbright Road Suite 400, Boynton Beach, FL 33426 (the "Consultant"), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm's proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category F (Electrical, Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Categories F; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the

benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide the professional services for the following disciplines:

Electrical, SCADA, and GIS services.

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. **CONSIDERATION**

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. **EQUAL OPPORTUNITY/MBE PARTICIPATION**

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and

approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 10.2 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.

- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily

and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the

Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public

records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Florida Technical Consultants, LLC.

By: _____

Its: President

James Barton

Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:
 - **Electrical**
 - **Supervisory Control and Data Acquisition (SCADA),**
 - **Geographical information systems (GIS)**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.

- e. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:

Signature

James Barton

Written Name

President

Title

April 9, 2024

Date

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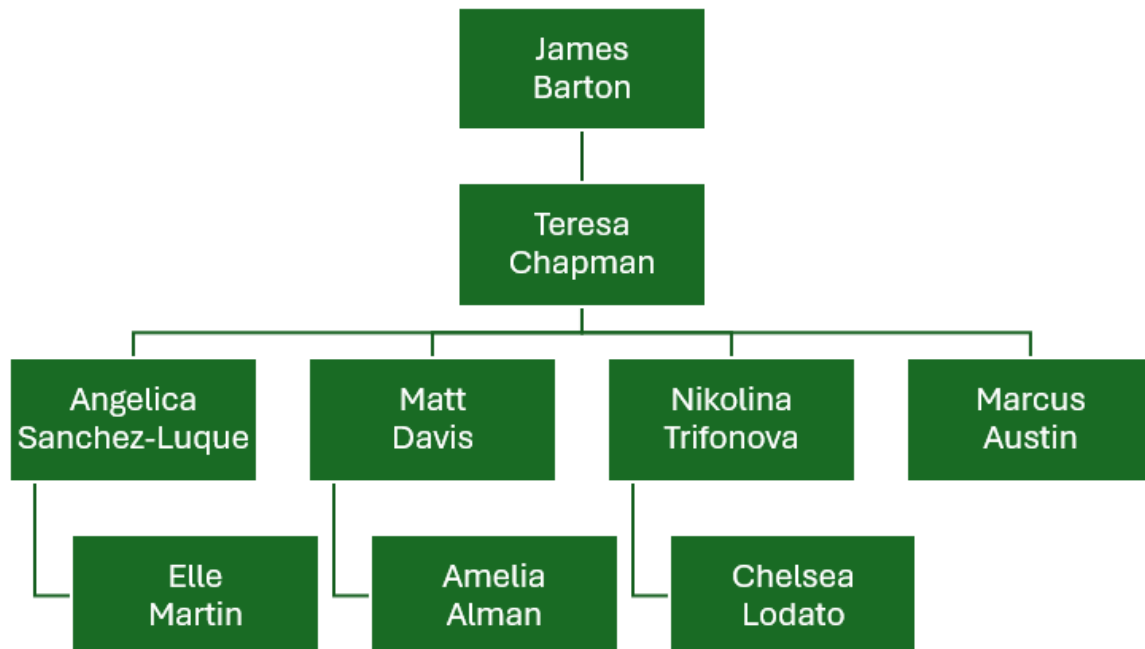
EXHIBIT B**PROPOSER'S ORGANIZATION CHART**

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of 3.0. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C
(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT

(To Be Provided By the CONSULTANT)

Name	Title	Direct Labor Rate
James Barton	Principal	\$ 70.00
Teresa Chapman	Project Manager	\$ 60.00
Matthew Davis	Project Manager	\$ 60.00
Nikolina Trifonova	Project Engineer	\$ 50.00
Angelica Sanchez	Senior GIS Analyst	\$ 50.00
Marcus Austin	Construction Services Manager	\$ 45.00
Chelsea Lodato	Project GIS Analyst	\$ 40.00
Elle Martin	Project GIS Analyst	\$ 40.00
Amelia Alman	Project GIS Analyst	\$ 40.00

EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY: Insurance and Indemnification -** The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92 \end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

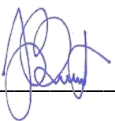
By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: Florida Technical Consultants

Address: 2240 Woolbright Road, Suite 400

City Boynton Beach State: FL Zip: 33426

Signature:  Date: April 9, 2024

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (04, Item 10.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Harvey E. Oyer Jr. Inc. Oyer, Macoviak and Associates 1903 S Congress Ave Ste 350 Boynton Beach FL 33426		CONTACT NAME: Robert Macoviak PHONE (A/C No. Ext): (561) 732-9305 E-MAIL ADDRESS: rmacoviak@oyerinsurance.com FAX (A/C No.): (561) 364-9848	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Continental Casualty	
		INSURER B: Transportation	
		INSURER C: Hiscox	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL2310206138 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	COMMERCIAL GENERAL LIABILITY	Y		6021699408	10/25/2023	10/25/2024	EACH OCCURRENCE \$ 2,000,000		
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000		
							MED EXP (Any one person) \$ 10,000		
							PERSONAL & ADV INJURY \$ 2,000,000		
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 4,000,000		
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 4,000,000		
	OTHER:						Employment Practices \$ 10,000		
A	AUTOMOBILE LIABILITY	Y		6021699408	10/25/2023	10/25/2024	COMBINED SINGLE LIMIT (Ea accident) \$		
	ANY AUTO						BODILY INJURY (Per person) \$		
	OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$		
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$		
	Combined single limit \$ 1,000,000								
	UMBRELLA LIAB						EACH OCCURRENCE \$		
	EXCESS LIAB						AGGREGATE \$		
	DED RETENTION \$								
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A		6025101036	02/24/2024	02/24/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1,000,000		
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000		
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000		
C	Professional Liability			P100.213.591.9	04/18/2024	04/18/2025	Aggregate 2,000,000		
							Each Claim 2,000,000		

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

CERTIFICATE HOLDER The Town of Lake Park 535 Park Avenue Lake Park FL 33403	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
---	--

ADDITIONAL COVERAGES

Item 10.

Ref #	Description	Coverage Code	Form No.	Edition Date
	Cyber Insurance - BGS Insurance Company Effective: 7/16/23 to 7/16/24			
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
1,000,000			1,000	
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and J Morton Planners for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner

Digitally signed by Bambi McKibbon-Turner
DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
ou=Assistant Town Manager/Human Resources Director,
email=B.Turner@lakeparkflorida.gov, c=US
Date: 2024.05.08 16:23:34 -04'00'

Cost of Item: N/A

Funding Source: N/A

Account Number: N/A

Finance Signature: N/A

Advertised: N/A

Date: N/A

Newspaper: N/A

Attachments:

1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – J Morton Planners

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with J Morton Planners for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 31-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH J MORTON PLANNING, FOR CONTINUING PROFESSIONAL URBAN PALNNING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Urban Planning Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Urban Planning Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and J Morton Planning was a top ranked firm for Category K, Professional Urban Planning Services; and

WHEREAS, in its response to the RFP, J Morton Planning represented to the TOWN that it is qualified and able to provide the services described in Category K; and

WHEREAS, the parties have agreed to a three-year agreement with J Morton Planning for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with J Morton Planning

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with J Morton Planning to provide Continuing Professional Urban

Planning Services on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this seventeen (17) day of April 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and J Morton Planners, 3910 RCA Blvd., Suite 1015, Palm Beach Gardens, Florida 33410 (the "Consultant"), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm's proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category K (Urban Planning), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Category K; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide professional services for the following disciplines:

Urban Planning

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference
RFP #113-2023 and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and

approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 102 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.

- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.
- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may

perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to

this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
J. Morton Planning & Architecture

By: Jennifer L. Morton
Its: President

Jennifer L. Morton

Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:

➤ **Urban Planning**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
 - f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:



Signature

Jennifer L. Morton

Written Name

President

Title

05/06/2024

Date

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Exhibit B



Jennifer Morton
President

IRRIGATION DESIGN



Coy Patrick
Owner, Head 2 Head Irrigation

LANDSCAPE ARCHITECTURE



Michelle Duchene
Director of Landscape Architecture & Design



Hays Henderson
Project Manager



Kinsey Bullock
Senior Landscape Designer



Rebekah Wadsworth
Landscape Designer

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of 3. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C
(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT

(To Be Provided By the CONSULTANT)

Name	Title	Direct Labor Rate
Jennifer L Morton	Principal Planner	\$288.00/hr
Michelle Duchene	Director of Landscape Architecture and Design	\$177.00/hr
Lauren McClellan	Director of Planning	\$177.00/hr
Hays Henderson	Senior Project Manager	\$137.02/hr
Kinsey Bullock	Project Manager	\$120.00/hr
Coy Patrick	Project Manager	\$120.00/hr
Bekah Wadsworth	Landscape Designer	\$111.00/hr

EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY:** Insurance and Indemnification - The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92 \end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. **Information and Reports:** The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. **Sanctions of Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. **Incorporation or Provisions:** The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. **Interest of Members of Congress:** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. **Interest of Public Officials:** No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. **Participation by Minority Business Enterprises:** The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: JMorton Planning and Landscape Architecture, Inc.

Address: 3910 RCA Boulevard, Ste 1015

City Palm Beach Gardens State: FL Zip: 33410

Signature:  Date: 05/06/2024

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____

EXHIBIT D



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM)

Item 11.

11/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PATRIOT INSURANCE AGENCY 13901 U.S. Highway 1 Suite 8 Juno Beach FL 33408		CONTACT NAME: Tina Tower PHONE (A/C, No, Ext): (561) 694-1776 FAX (A/C, No): (561) 694-1774 E-MAIL ADDRESS: tina@gopatriotinsurance.com															
INSURED JMorton Planning & Landscape Architecture Inc 3910 RCA Boulevard, Suite 1015 Palm Beach Gardens FL 33410		INSURER(S) AFFORDING COVERAGE <table border="1"> <thead> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Charter Oak Fire Insurance Co A++ XV</td> <td>25615</td> </tr> <tr> <td>INSURER B: United States Liability Insurance Company A++ XI</td> <td>25895</td> </tr> <tr> <td>INSURER C: Travelers Casualty & Surety Co A++ XV</td> <td>19038</td> </tr> <tr> <td>INSURER D: Travelers Property Casualty Co of America A++ XV</td> <td>25674</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER	NAIC #	INSURER A: Charter Oak Fire Insurance Co A++ XV	25615	INSURER B: United States Liability Insurance Company A++ XI	25895	INSURER C: Travelers Casualty & Surety Co A++ XV	19038	INSURER D: Travelers Property Casualty Co of America A++ XV	25674	INSURER E:		INSURER F:	
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INSURER D: Travelers Property Casualty Co of America A++ XV	25674																
INSURER E:																	
INSURER F:																	

COVERAGES	CERTIFICATE NUMBER: CL23111003517	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		660 0K532634	11/20/2023	11/20/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Employee Benefits \$ COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist \$ 1,000,000
D	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		BA-1R831498	11/20/2023	11/20/2024	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist \$ 1,000,000
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP 3L483372	11/20/2023	11/20/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB 0K533495	11/20/2023	11/20/2024	<input checked="" type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	PROFESSIONAL LIABILITY BASIS IS CLAIMS MADE			SP1578049A	09/16/2023	09/16/2024	EACH CLAIM \$5,000,000 AGGREGATE \$5,000,000

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

LANDSCAPE PLANNING & ARCHITECTURE

It is agreed that where required by written contract the Town of Lake Park is listed as Additional Insured.

CERTIFICATE HOLDER		CANCELLATION	
Town of Lake Park 650 Old Dixie Highway Lake Park FL 33403		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 	

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ADDITIONAL COVERAGES

Ref #	Description PIP-Basic	Coverage Code PIP	Form No.	Edition Date
Limit 1 10,000	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description Medical payments	Coverage Code MEDPM	Form No.	Edition Date
Limit 1 5,000	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description Waiver of Subrogation BLKT	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description Terrorism	Coverage Code TERRO	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description Expense constant	Coverage Code EXCNT	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium \$200.00				
Ref #	Description WC & Employer's liability	Coverage Code WCEL	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Keshavarz & Associates, Inc. for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner
 Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park, ou=Assistant Town Manager/Human Resources Director, email=bturmer@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:27:06 -04'00'

Cost of Item:	<u>N/A</u>	Funding Source:	<u>N/A</u>
Account Number:	<u>N/A</u>	Finance Signature:	<u>N/A</u>
Advertised:	<u>N/A</u>	Newspaper:	<u>N/A</u>
Date:	<u>N/A</u>		

Attachments:

1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – Keshavarz & Associates

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Keshavarz & Associates, Inc. for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 32-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH KESHAVARZ & ASSOCIATES, INC., FOR CONTINUING PROFESSIONAL ELECTRICAL SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) AND GEOGRAPHICAL INFORMATION SYSTEMES (GIS), ENVIRONMENTAL PLANNING & STUDIES AND LAND SURVEYING & MAPPING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Electrical Supervisory Control and Data Acquisition (SCADA) & Geographical Information Systems (GIS), Environmental Planning & Studies and Land Surveying & Mapping Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals (RFP) to solicit professional consulting firms to provide continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) & Geographical Information Systems (GIS), Environmental Planning & Studies and Land Surveying & Mapping Services; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Keshavarz & Associates, Inc. was a top ranked firm for Category F, G & H, Professional Electrical Supervisory Control and Data Acquisition (SCADA) & Geographical Information Systems (GIS), Environmental Planning & Studies and Land Surveying & Mapping Services; and

WHEREAS, in its response to the RFP, Keshavarz & Associates, Inc. represented to the TOWN that it is qualified and able to provide the services described in Category F, G & H; and

WHEREAS, the parties have agreed to a three-year agreement with Keshavarz & Associates, Inc. for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Keshavarz & Associates, Inc.; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with Keshavarz & Associates, Inc to provide Continuing Professional Electrical Supervisory Control and Data Acquisition (SCADA) & Geographical Information Systems (GIS), Environmental Planning & Studies and Land Surveying & Mapping Services, on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this Fifteenth (15th) day of May 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and Keshavarz & Associates, Inc. 711 N Dixie Hwy Suite #201, West Palm Beach, FL 33401 (the "Consultant"), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm's proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category F (Electrical, Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS), Category G (Environmental Planning and Studies), and Category H (Land Surveying & Mapping), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Categories F, G & H; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide the professional services for the following disciplines:

- **SCADA**
- **Environmental Planning and Studies, services**
- **Land Surveying & Mapping**

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in "3, Consideration." The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon within the personnel classifications, attached hereto as "Exhibit C." The hourly rates shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the Consultant, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall defend, indemnify, save, and hold the Town, its elected and appointed officials, agents, assigns, and employees, harmless from any and all claims or causes of action, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent resulting from any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subconsultants, agents, assigns, invitees, or employees in connection with this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subconsultants, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subconsultants of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation or modification of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed through the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the satisfaction of the Town.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subconsultants or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 10.2 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subconsultants or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.
- 10.6 In the event that a work order is issued for a project which is funded or

partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.

- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Consultant or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subconsultants, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms

and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the Consultant upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum

of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.

- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and

services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this 15th day of May 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Keshavarz & Associates, Inc.

By: _____

Its: Managing Director

AMIR KESHAVARZ, P.E.
Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:
 - Category F (Electrical, Supervisory Control and Data Acquisition (SCADA) and Geographical Information Systems (GIS), and
 - Category G (Environmental Planning and Studies
 - Category H (Land Surveying & Mapping)

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
 - f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:

Signature _____

AMIR J. KESHAVARZ, P.E.

Written Name _____

MANAGING DIRECTOR

Title _____

Date _____

MAY 8, 2024

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EXHIBIT B**PROPOSER'S ORGANIZATION
CHART**

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor rate times a Multiplier of **3.19**. Reimbursement for subconsultants will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C
(continued)

**PERSONNEL CLASSIFICATION DIRECT LABOR RATES FOR ALL EMPLOYEES
EXPECTED TO WORK ON THIS PROJECT**
(To Be Provided By the CONSULTANT)

<u>PERSONNEL CLASSIFICATION</u>	<u>DIRECT LABOR RATE</u>
PROJECT DIRECTOR / PRINCIPAL	\$108.00
SENIOR PROJECT MANAGER	\$85.00
PROJECT MANAGER	\$72.00
SENIOR PROJECT ENGINEER / SURVEYOR	\$60.00
PROJECT ENGINEER / SURVEYOR	\$48.00
SENIOR DESIGNER	\$41.00
DESIGNER / CADD TECHNICIAN	\$33.00
INTERN	\$24.00
SENIOR CONSTRUCTION REPRESENTATIVE	\$45.00
CONSTRUCTION REPRESENTATIVE	\$38.00
SURVEY CREW	\$55.00
UTILITY / PERMIT COORDINATOR	\$38.00
PROJECT / CONTRACT ADMINISTRATOR	\$41.00
CLERICAL	\$22.00

EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subconsultants. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY:** Insurance and Indemnification - The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subconsultants are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES**DIRECT LABOR COST**

Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92 \end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subconsultants, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subconsultants, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall be any interest, direct or indirect, in this contract or the proceeds

thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant.
 - 1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 - 2. "MBE Obligation: The recipient or its subconsultant agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or subconsultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above Consultant) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this Consultant; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above Consultant) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):

By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Consultant Name: **Keshavarz & Associates, Inc.**

Address: **711 N. Dixie Highway, Suite 201**

City **West Palm Beach**

State: **Florida**

Zip: **33401**

Signature:  Date: **5/8/2024**

NON-CERTIFICATION:

Consultant Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Originating Department: Public Works

Agenda Title: Resolution of the Town Commission of the Town of Lake Park, Florida, Authorizing and Directing the Town Mayor to Execute a Professional Services Agreement between the Town of Lake Park and Kimley-Horn and Associates, Inc. for the provision of Continuing Professional Services on an as-needed basis.

Approved by Town Manager: Bambi McKibbon-Turner
Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park, ou=Assistant Town Manager/Human Resources
 Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:25:28 -04'00'

Cost of Item:	<u>N/A</u>	Funding Source:	<u>N/A</u>
Account Number:	<u>N/A</u>	Finance Signature:	<u>N/A</u>
Advertised:	<u>N/A</u>	Newspaper:	<u>N/A</u>
Date:	<u>N/A</u>		

Attachments:

1. Agenda Request Form (ARF)
2. Resolution
3. Professional Services Agreement – Kimley-Horn and Associates

Please initial one:

 Yes, I have notified everyone

 Not applicable in this case

Background/Summary Explanation:

In the course of providing services to the Town of Lake Park residents, the Town requires and utilizes the services of Professional Consultants on an as-needed basis.

The Town required Continuing Professional Consulting Services that are outside of those services classified under the Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Section 287.055. The Town solicits these additional services through its Professional Consultant Services procurement process, but develops the agreements separate from the CCNA process.

The Town developed and advertised a Request for Qualifications of Professional Consultant Services (RFQ #107-2023) and on July 23, 2023 received bidder proposal packages. After review and analysis, the Town has selected responsive submitters to be awarded Continuing Contracts for Professional Services in accordance with the terms, conditions and specifications contained in the Request for Qualifications.

The presented Consultant Services Agreement is for a 3-year period with two additional, two-year term extensions by mutual consent.

The Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Kimley-Horn & Associates for the awarded Professional Consulting Services.

Recommended Motion:

I move to adopt Resolution No. _____.

RESOLUTION 33-05-24**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR CONTINUING PROFESSIONAL ENVIRONMENTAL PLANNING AND STUDIES AND URBAN PLANNING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Lake Park, Florida (hereafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into contractual arrangements with private corporations or other persons for continuing professional services, pursuant to Section 287.055, Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of a professional consultant providing Professional Environmental Planning & Studies and Urban Planning Services, on an as-needed basis; and

WHEREAS, pursuant to the terms, conditions and specifications contained in the Request for Qualifications, the Town issued a Request for Proposals RFP) to solicit professional consulting firms to provide continuing Professional Environmental Planning & Studies and Urban Planning Services;; and

WHEREAS, in its RFP, the Town established eleven separate professional work categories; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Kimley-Horn and Associates, Inc. was a top ranked firm for Category G &K, Professional Environmental Planning & Studies and Urban Planning Services;; and

WHEREAS, in its response to the RFP, Kimley-Horn and Associates, Inc. represented to the TOWN that it is qualified and able to provide the services described in Category G & K; and

WHEREAS, the parties have agreed to a three-year agreement with Kimley-Horn and Associates, Inc. for services to the TOWN, with the option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into an agreement with Kimley-Horn and Associates, Inc.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK:**

Section 1. The foregoing recitals are incorporated herein.

Section 2. The TOWN Commission hereby authorizes and directs the Mayor to execute an agreement with Kimley-Horn and Associates, Inc. to provide Continuing Professional Environmental Planning & Studies and Urban Planning Services, on an as-needed basis, a copy of which is attached hereto and incorporated herein as Exhibit A, Professional Services Agreement for Continuing Services.

Section 3. This Resolution shall be effective upon execution.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (AGREEMENT) is made and entered into this fifteenth (15) day of May 2024 by and between the Town of Lake Park, a municipal corporation of the state of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and Kimley-Horn and Associates, Inc., 1920 Wekiva Way, Suite 200, West Palm Beach, FL 33411 (the "Consultant"), (collectively the Parties).

WITNESSETH THAT:

WHEREAS, the Town is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to enter into agreements for certain continuing professional services; and

WHEREAS, the Town issued a Request for Qualifications (RFQ) to solicit from certain professional consulting firm's proposals to provide continuing professional service; and

WHEREAS, the Town established eleven professional work categories and on October 24, 2023, received seventeen responses to its RFQ; and

WHEREAS, on November 9, 2023, a Town Evaluation Committee ranked the seventeen responses for each of the eleven work categories, and Consultant was a top ranked firm for Category G (Environmental Planning & Studies), and Category K (Urban Planning), and

WHEREAS, in its response to the RFQ, Consultant represented to the Town that it is qualified and able to provide the services described in Categories G, & K; and

WHEREAS, the parties have agreed to a three-year agreement, with an option to extend the agreement for two additional two-year terms by mutual consent; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with Consultant.

NOW THEREFORE, the Town and the Consultant in consideration of the benefits flowing from each to the other do hereby agree as follows:

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of the

benefits flowing from each to the other do hereby agree as follows:

1. SCOPE OF WORK, WORK ORDERS, SERVICES AND PERFORMANCE:

- 1.1 The Consultant shall, to the satisfaction of the Town, fully and timely provide professional services for the following disciplines:

- **Environmental Planning and Studies, services.**
- **Urban Planning**

The specific scope of services for assigned projects shall be detailed in individual Work Orders. The Work Orders may provide for compensation in a lump sum, hourly rate, time and material, or a combination thereof as described below in “3, Consideration.” The Town specifically reserves the right to determine whether any specific task requested by the Town is within the scope of work to be provided by the Consultant. Consultant understands and acknowledges that this Agreement does not obligate the Town to provide Consultant with a minimum or guaranteed amount of work. The parties also agree and understand that funding for any Work Order is subject to the Town Commission budgeting and appropriating funds for the work.

- 1.2 Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to any work assigned pursuant to a Work Order, the revisions or changes to the Work Order shall be the subject of a written, approved amendment to the Work Order.
- 1.3 In the performance of professional services, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. (the “Standard of Care”). The Consultant shall use due care in performing its services and shall have due regard for acceptable professional standards and principles. Consultant’s standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.

2. TERM

- 2.1 The term of this Agreement is for three (3) years. Upon the mutual agreement of the Town and the Consultant, and the execution of an amendment to the Agreement, it may be renewed at the end of the initial three (3) year term for two additional two (2) year terms commencing on the anniversary date of this Agreement.

3. CONSIDERATION

- 3.1 As consideration for providing the services set forth in this Agreement for any Work Orders, the Town shall pay the Consultant a mutually agreed upon lump sum dollar amount.

The lump sum dollar amount for each Work Order shall be the exclusive basis for the Consultant's compensation for the specific Work Order, including all of the Consultant's fees and costs.

- 3.2 Consultant agrees that it shall pay its personnel based upon the hourly rates, attached hereto as "Exhibit C." The hourly rates paid to its personnel shall remain in effect for a period of one (1) year from the date of execution of the Agreement. At the end of the initial one (1) year period and each following one (1) year period, the contractor, shall have opportunity to resubmit their hourly rates schedule for Town review, acceptance and possible agreement amendment to establish new rates.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature of this Agreement by an authorized signature of Consultant serves as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Consultant agrees that the Town may adjust the consideration for this Agreement to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town may make any such adjustment within the term of this Agreement.

4. EQUAL OPPORTUNITY/MBE PARTICIPATION

- 4.1 The Consultant hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Agreement. The Consultant shall take all measures necessary to effectuate these assurances.
- 4.2 The Consultant acknowledges that the Town encourages the participation of minority owned, and women owned business enterprises in the Town's procurement and contracting activity. Accordingly, the Consultant shall take all necessary and reasonable steps to ensure that women and minority business enterprises (W/MBE) have the opportunity to compete for and perform work related to this Agreement.

5. NON-EXCLUSIVITY

The award of this Agreement shall not impose any obligation on the Town to utilize the Consultant for all work within its profession for, which the Town may requires said professional services during the term of the Agreement. The Town specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the Town's best interest.

6. INVOICING AND PAYMENT

- 6.1 The Consultant's invoices shall reference **RFP #113-2023** and shall be emailed or mailed to the following address:

Finance Department
Town of Lake Park
Attn: Account Payable
535 Park Avenue
Lake Park, Florida 33403
accountpayable@lakeparkflorida.gov

- 6.2 Bills for fees or other compensation for services or expenses shall be submitted to the Town in in detail sufficient for a proper review and determination that the requested compensation corresponds with the completed and billed work. All bills for services shall be accompanied by an appropriate invoice. This appropriate invoice shall include the work order number, the original value of the work order, the amount of work billed to date, the amount of the current invoice and the amount remaining for the work order.
- 6.3 The bills for any travel expenses shall only be payable on a reimbursement basis, when authorized by the Town. The consultant shall submit all documentation, including receipts in order to be entitled to reimbursement in accordance with Section 112.061, Florida Statutes.
- 6.4 Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Town at all times during the term of this Agreement and for three years after final payment for any of the work-orders have been made. Copies of these records shall be promptly furnished to the Town upon written request.
- 6.5 Records of costs incurred shall include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and any approved Sub-consultants performing work pursuant to a work order, and all other records of Consultant and

approved Sub-consultants considered necessary by the Town for a proper audit of project costs.

- 6.6 The Town shall pay the full amount of the invoice within thirty (30) days of receipt, upon acceptance of the work by the Town's assigned project manager.

7. INDEMNIFICATION AND INSURANCE

- 7.1 For One Hundred Dollars and No Cents (\$100.00) consideration, the sufficiency of which is hereby acknowledged, payable as part of and included in the first payment hereunder, the Consultant shall, indemnify, and hold the Town, its elected and appointed officials, assigns, and employees, harmless from, damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims to the extent caused by any negligent act or omission, or the violation of any federal, state, or local law or regulation, by the Consultant, its subcontractors, agents, assigns, invitees, or employees in the performance of this Agreement. The Consultant further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Agreement.
- 7.2 The Consultant shall procure and maintain, through the term of this Agreement, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the attached "Exhibit D" and made a part of this Agreement. The insurance limits and coverage conditions identified require first dollar coverage except for Auto Property Damage. All deductibles will require prior written approval by the Town. The Town shall be named as an "additional insured" under the General and Automobile insurance. The coverage required shall extend to all employees and subcontractors of the Consultant.

The Consultant shall provide the Town certificates of insurance as proof of insurance prior to the commencement of any performance by the Consultant. The Consultant shall notify the Town at least thirty (30) days prior to cancellation of any insurance policy required under this Agreement. The failure to provide the Town with proof of insurance, or the cancellation of any insurance policy during the term of this Agreement shall be cause for the Town's termination of the Agreement. IN the event any insurance policy required by this Agreement shall lapse, be cancelled or terminated, Consultant shall immediately provide the Town with a certificate of insurance for a new policy.

8. TERMINATION/REMEDIES

8.1 If the Town fails to fulfill its obligations under this Agreement, the Consultant shall have the right to terminate this Agreement; however, prior to the Agreement's termination, the Consultant shall provide the Town with written notice of the Town's failure to comply with its obligations. The Town shall then have ten (10) calendar days from receipt of notice to correct the noticed deficiency. If the Town fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) daytime period.

8.2 The Town may terminate this Agreement in whole, or for the performance of any work orders issued under this Agreement whenever the Town shall determine that such termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Consultant of a written notice specifying the work order under the Agreement being terminated, or that the Agreement in whole is terminated, and the date upon which such termination becomes effective. In the event of termination, the Town shall compensate the Consultant for all authorized and accepted work performed up to the termination date. The Town shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Agreement. The Town may withhold all payments to the Consultant where any work has not been performed to the Standard of Care.

8.3 The Town reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the Town, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the Town. The Town reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. The Town further reserves the right to suspend the qualifications of the Consultant to do business with the Town upon any such conviction.

9. ATTORNEY FEES

If either party initiates legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover an attorney's fee.

10. STANDARDS OF COMPLIANCE

- 10.1 The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Consultant, upon request, as to any such laws of which it has present knowledge.
- 10.2 The Consultant, by its execution of this Agreement, acknowledges and attests that, neither the employees of Consultant nor any of its suppliers, subcontractors or affiliates who shall perform work which is intended to benefit the Town, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The Consultant further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement is subject to immediate termination by the Town, for any misstatement or lack of compliance with the mandates of said statute. The Town, in the event of such termination, shall be relieved of its obligation's hereunder to compensate the Consultant for any work or materials furnished.
- 10.3 The Consultant shall not be exempted from paying Florida sales and use taxes to the appropriate governmental agencies or for payments the Consultant is obligated to make to suppliers for taxes on materials it uses to fulfill its contractual obligations with the Town. The Consultant shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes it is obligated to pay as a result of this Agreement.
- 10.4 Pursuant to Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement. Further the Consultant warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the Town may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 10.5 All final plans, documents, reports, studies and other data prepared by the Consultant shall, if applicable, bear the professional's seal and/or signature, in accordance with applicable Florida Statutes, or administrative rules promulgated by the Department of Business and Professional Regulation.

- 10.6 In the event that a work order is issued for a project which is funded or partially funded by a grant from the Federal Government, the Consultant agrees to comply with the provisions contained in Exhibit G, Terms for Federal Aid Contracts.
- 10.7 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Consultant and its Sub-consultants. The Consultant understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its Sub-consultants to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the Town to be material breach of this Agreement justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Consultant acknowledges that its failure to cooperate with the Inspector General of Palm Beach County is a violation of Palm Beach Code, Section 2-421-2-440, and that it may be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree-misdemeanor.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Consultant is an independent contractor and is not an employee or agent of the Town. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the Town and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant is free to provide similar services for others.
- 11.2 The Consultant shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the Town. Any attempted assignment in violation of this provision shall be void.
- 11.3 The Consultant shall not pledge the Town's credit or make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

12. RECORDS RETENTION/OWNERSHIP/AUDIT

- 12.1 The Consultant shall comply with public records laws Chapter 119, Florida Statutes, specifically to: Keep and maintain public records that ordinarily

and necessarily would be required by the Town in order to perform the service; Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed exempt as authorized by law; Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt of confidential and exempt from public disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

- 12.2 The Town has not performed a pre-audit of the Consultant's or Sub-consultant's financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the Consultant shall permit the Town or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the Town shall have the right to audit the Consultant's and any Sub-consultant's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one (1) year after completion of this Agreement. This audit may be performed by the Town or its designated agent.
- 12.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the Consultant in connection with this Agreement, may be utilized by the Town in its normal course of business. Town use may include, but shall not be limited to, reproduction, distribution, and preparation of derivative works. The Town shall not hold the Consultant responsible if documents are used for other purposes than intended.

13. CONFLICTS

The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiple clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be doing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come

before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.

14. GENERAL PROVISIONS

- 14.1 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but the Town shall have the option of terminating this Agreement or electing to allow the Agreement to remain in effect. This provision shall not apply if the "Statement of Work" of this Agreement specifies that performance by the Consultant is specifically required during the occurrence of any of the events herein mentioned.
- 14.2 The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 14.3 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 14.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such a waiver shall be limited to the provisions of this Agreement specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 14.5 All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- 14.6 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 14.7 This Agreement may be amended, extended, or renewed in accordance with the terms contained herein, and only with the written approval of the parties.
- 14.8 This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or Agreements previously existing between the parties with respect to the subject matter of this Agreement. The Consultant recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a contractual relationship unless they have been reduced to writing and signed by an authorized Town representative. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

15. PUBLIC RECORDS

The Consultant shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 15.1 Keep and maintain public records required by the Town to perform the service.
- 15.2 Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- 15.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the work and services to be provided pursuant to this Agreement and following completion of this Agreement.
- 15.4 Upon the completion of the work and services to be performed pursuant to

this Agreement, the Consultant shall transfer, at no cost, to the Town all public records in possession of the Consultant or its Sub-consultants related to the Project; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the work and services for the Project, the Consultant shall destroy any duplicate public records that are exempt from public records disclosure. If the Consultant shall keep and maintain public records during the time it is performing the work and services pursuant to this Agreement. The Consultant acknowledges that it is required to comply with all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 15.5 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

16. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this AGREEMENT on the date first written above.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
Roger Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2024 by Roger Michaud, Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

CONSULTANT
Kimley-Horn and Associates, Inc.

By:  _____

Its: _____ Sr. Vice President

Marwan Mufleh
Printed

EXHIBIT A

STATEMENT OF WORK

I. Introduction:

- a. Pursuant to Lake Park Town Code, Section 2-247(g), Competitive Sealed Solicitation Process, the Town of Lake Park, Florida, seeks to identify firms with substantial experience and capabilities to perform consulting services on an open end (continuing services) basis.
- b. The Town shall endeavor to award a non-exclusive contract to a maximum of three (3) firms in most professional services categories listed herein. The term of said contract shall be three (3) years, with the option to extend the contract for two additional two (2) year terms by mutual agreement. The selected firm(s) shall support the TOWN's staff with the implementation of the TOWN's Comprehensive Plan and Community Investment Program (CIP) for FY 2024-2027. In addition, the selected firms(s) shall provide professional continuing services in the fields of architecture, engineering (various types), landscape architecture, surveying and mapping, planning and other support services as outlined in the Statement of Work (Exhibit A) and as required by the TOWN.

II. Scope of Services:

- c. The services sought by the Town may include, whether in part or in whole, but not limited to: engineering, architecture, landscape architecture, right of way engineering, construction engineering and inspection (CEI), civil engineering, structural engineering, environmental engineering, surveying, mechanical and electrical engineering, preparation of plans and specifications, plan reviews, construction management, project management, contract administration, or planning services requiring the utilization of a professional engineer or architect. A firm performing design services for Town projects shall not be permitted to perform construction engineering and inspection (CEI) services for the same project.
- d. Respondents shall submit their qualifications and shall include sufficient information in their proposals to clearly describe their ability to provide the Town support in the following professional disciplines and areas of work:
 - **Environmental Planning and Studies**
 - **Urban Planning**

Should a Respondent choose to provide multi-disciplinary support by contracting with Sub-consultants, the Respondent is responsible for submitting any and all agreements it has with a Sub-consultant that clearly illustrates the services to be performed by the Sub-consultant and demonstrates that they are capable of providing the necessary responsiveness, quality control, staff experience/qualifications, and any other services as represented in the Respondent's proposal. The Town's selection of Respondents will be based, in part, on the qualifications and capabilities of their defined sub-consultants, which acts as a substantial inducement and material consideration in the selection. Respondents shall not substitute a sub-consultant during the process, or after award without the prior written approval of the Town. The above-listed disciplines and specialties shall be available from a Respondent's employees or by any approved sub-consultants.

- e. Perform engineering and planning studies/investigations, preparation of plans and specifications, provide bidding assistance, inspection, and administration of construction, permitting of TOWN roads, bridges and other horizontal control work as required in the implementation of the approved capital program.
- f. Perform electronic planning/engineering analysis, traffic studies, etc. as required in support of the TOWN's development review and approval process.
- III. Exclusions: The scope of services will normally exclude design and general multi-disciplinary professional services in support of the Town of Lake Park's potable water treatment, storage and distribution system. The TOWN may include these professional services in this contract if urgency or circumstance deems it to be in the TOWN's best interest.
- IV. Work Authorization: Work on specific projects will be authorized by written sequentially numbered amendments, hereinafter referred to as Work Orders, to this contract agreement.
- V. Deliverables: A list of deliverables shall be submitted as detailed in the scope of professional services for each amendment. The deliverables shall be submitted on or before the date provided in the schedule.

ACKNOWLEDGEMENT OF SCOPE OF WORK:


Signature

Marwan Mufleh

Written Name

Sr. Vice President

Title

5-1-2024

Date

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EXHIBIT B

PROPOSER'S ORGANIZATION CHART

EXHIBIT C

BASIS FOR COMPENSATION RATES AND SCHEDULES

The TOWN shall pay to the CONSULTANT for providing and performing the professional engineering and architectural services set forth in each approved work order as follows:

The basis of compensation shall be Direct labor cost times a Multiplier of _____. Reimbursement for subcontractors will be billed at cost times 1.075. All non-project related clerical and CADD costs are considered to be included in the overhead. In addition to compensation for labor, the TOWN agrees to reimburse the CONSULTANT for direct work order expenses as follows:

Expenses not included in the multiplier above will be estimated for each work order and submitted for reimbursement with the appropriate supporting documentation to reflect that the expense was incurred in support of the work order, or a fixed price reimbursement cost negotiated for each work order based on a detailed estimated breakdown of reimbursable expenses. A fixed percentage of direct labor cost shall not be used.

Notwithstanding the foregoing, the compensation paid by the TOWN to the CONSULTANT for labor and expenses shall not exceed the Not-to-exceed price set forth in the approved Work Order.

FREQUENCY OF BILLING

Invoicing shall be submitted to the TOWN on a monthly basis, or on the basis of "deliverables", in accordance with the Contract AGREEMENT.

SUPPLEMENTAL RECORDS

The CONSULTANT must maintain adequately detailed time records for all principals, partners, and technical employees who devote time to the work, and any part of whose salaries is included in direct labor cost. Time sheets, if requested by the TOWN, are to be provided upon presentation of each invoice. Receipts and other documents shall be provided to the TOWN to substantiate all expenditures.

EXHIBIT C
(continued)

DIRECT LABOR RATES FOR ALL EMPLOYEES EXPECTED TO WORK ON THIS PROJECT

(To Be Provided By the CONSULTANT)

Name	Title	Direct Labor Rate
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EXHIBIT D

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain, or cause to be maintained, the following specified insurance coverage's in the amount set forth hereafter.

1. **WORKER'S COMPENSATION:** Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy shall include Employer's Liability. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the CONSULTANT and subcontractor. Statute limits shall be in compliance with applicable State and Federal laws.
2. **COMPREHENSIVE GENERAL LIABILITY:** Shall have the minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent CONSULTANTS, Products and Completed Operations, Broad Form Property/Personal Injury, XCU coverage, and a Contractual Liability Endorsement.
3. **BUSINESS AUTO LIABILITY:** Shall have the minimum limits of coverage of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
4. **PROFESSIONAL LIABILITY: Insurance and Indemnification -** The CONSULTANT shall maintain Professional Liability Insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of any negligence, error or mistake in rendering or omission in failing to render the professional services required in the performance of the CONSULTANT's agreement with the TOWN. Required coverage shall be for Limits of Liability not less than \$1,000,000.00.

The Town of Lake Park shall be included as an Additional Insured under the General Liability and Automobile Liability policies.

Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. There shall be a thirty (30) day notification to the Town of Lake Park, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the CONSULTANT to ensure that all subcontractors are adequately insured or covered under their policies. Certificates of Insurance shall be on file with the Town of Lake Park and approved by same prior to the commencement of any work activities. Such approval does not waive the CONSULTANT's responsibility to comply with the requirements of this section on modifications of this section. The TOWN may, at its discretion, require the CONSULTANT to provide a complete certified copy of its insurance policy(s).

EXHIBIT E**SAMPLE WORK ORDER FEE BACKUP**

WORK ORDER NO. _____

AGREEMENT PERFORMANCE

Proposed fee and schedule for completion of major tasks under Work Order No. _____ is summarized below:

SUMMARY OF PROPOSED FEES

Proposed labor costs and associated expenses for basic consultant services are tabulated below and detailed in Exhibit C.

BASIC SERVICES

	<u>DIRECT LABOR COST</u> (Employees)
Task 1 -	\$
Task 2 -	\$
Task 3 -	\$
Task 4 -	\$
Task 5 -	\$

Not to exceed (NTE) cost for labor: (\$ A Direct Labor Cost of employees x multiplier)
\$ A

Reimbursable expenses billed in accordance with AGREEMENT: \$ B

Total not to exceed (NTE) Cost for project: A + B

EXHIBIT F

CPI ADJUSTMENT FORMULA AND SAMPLE CALCULATION

Rate Adjustment Formula

$$\text{Rate Effective Year 3} = \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}]$$

where Rate of Change in CPI =

$$\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right)$$

Sample Rate Adjustment Calculations

Example 1

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 210.7

Rate Effective Year 2 = 11.35

$$\begin{aligned} \text{Rate of Change in CPI} &= \text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (3.54\%, 5.00\%) \\ &= 3.54\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.0354] \\ &= 11.75 \end{aligned}$$

Example 2

CPI Year 2 as of 10/1/08 = 203.5

CPI Year 3 as of 10/1/09 = 217.7

Rate Effective Year 2 = 11.35

Rate of Change in CPI =

$$\begin{aligned} &\text{Minimum of } \left(\frac{\text{CPI Year 3} - \text{CPI Year 2}}{\text{CPI Year 2}} \times 100\%, 5.00\% \right) \\ &= \text{Minimum of } (6.98\%, 5.00\%) \\ &= 5.00\% \end{aligned}$$

$$\begin{aligned} \text{Rate Effective Year 3} &= \text{Rate Effective Year 2} \times [1 + \text{Rate of Change in CPI}] \\ &= 11.35 \times [1 + 0.05] \\ &= 11.92 \end{aligned}$$

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EXHIBIT G

TERMS FOR FEDERAL AID AGREEMENTS

The following terms apply to all Work Orders issued by the TOWN in which it is indicated in the Work Order that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the TOWN relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this AGREEMENT shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of U.S.D.O.T., anything to the contrary in this AGREEMENT notwithstanding.
- C. Compliance with Regulations: The CONSULTANT shall comply with the regulations of the TOWN relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
- D. Nondiscrimination: The CONSULTANT, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by a CONSULTANT of the CONSULTANT's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

- F. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN or U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall certify to the TOWN, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions of Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the TOWN shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or;
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
 3. Disgorgement or clawback of previous payments made
- H. Incorporation or Provisions: The CONSULTANT will include the provisions of Paragraph A through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter

shall be any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

- K. Participation by Minority Business Enterprises: The CONSULTANT shall agree to abide by statements in Paragraph (1) and (2) which follow. These statements shall be included in all subsequent agreements between the CONSULTANT and any subconsultant or contractor.
1. "Policy: It is the policy of the TOWN that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 applies to this agreement."
 2. "MBE Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this AGREEMENT is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this AGREEMENT.
- M. It is understood and agreed that if the CONSULTANT at any time learns that the certification it provided the TOWN in compliance with 49 CFR, Section 23.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the CONSULTANT shall provide immediate written notice to the TOWN. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the CONSULTANT in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TOWN hereby certifies that neither the CONSULTANT nor the CONSULTANT's representative has been required by the TOWN, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

The TOWN further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or;
3. Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.
4. The CONSULTANT further acknowledges that this agreement will be furnished to the TOWN in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT H

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY, AND VOLUNTARY
EXCLUSION – LOWER TIER PARTICIPANT**

Certification regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions pursuant to 49 CFR 24, Code of Federal Regulations, Part 24.510(b):


By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The prospective Lower-Tier participant further certifies that:

1. I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I/we knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies.
2. Further, I, and any principal of my firm, shall provide immediate written notice to the person to whom this proposal is submitted if, at any time, we learn that my/our certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I/we will not knowingly enter into any Lower-Tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
4. I, and any principals of my firm, further agree by submitting this proposal that I/we will include this Certification, without modification, in all Lower-Tier covered transactions and in all solicitations for Lower-Tier covered transactions.

Contractor Name: Kimley-Horn and Associates, Inc.

Address: 1920 Wekiva Way

City West Palm Beach State: FL Zip: 33411

Signature:  Date: 5-1-2024

NON-CERTIFICATION:

Contractor Name: _____

Address: _____

City _____ State: _____ Zip: _____

Signature: _____ Date: _____



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Agenda Item No.

Agenda Title: AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE I, SECTION 54-8 OF THE TOWN CODE PERTAINING TO THE TOWN'S LOCAL AMENDMENTS TO CHAPTER ONE OF THE FLORIDA BUILDING CODE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT ; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

☐ SPECIAL PRESENTATION/REPORTS ☐ CONSENT AGENDA
☐ BOARD APPOINTMENT ☐ OLD BUSINESS
☒ **PUBLIC HEARING - ORDINANCE ON 2nd READING**
☐ NEW BUSINESS
☐ OTHER: _____

Approved by Town Manager Bambi McKibbon-Turner

Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
 email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.09 09:38:26 -04'00'

Nadia Di Tommaso / Community Development Director
 Name/Title

Originating Department: Community Development	Costs: \$ Legal Ad Funding Source: Advertising Acct. #500-34920 <input type="checkbox"/> Finance <small>Barbara A. Gould</small> <small>Digitally signed by Barbara A. Gould DN: cn=Barbara A. Gould, o=Town of Lake Park, email=bturner@lakeparkflorida.gov, c=US Date: 2024.05.09 09:38:26 -04'00'</small>	Attachments: Ordinance 05-2024 with Exhibit A Legal Ad
Advertised: Date: 04/21/2024 Paper: Palm Beach Post <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone OR Not applicable in this case ND Please initial one.

Summary Explanation/Background:

APPROVED ON 1st READING – April 17, 2024

This is more of a housekeeping item. The Town of Lake Park's (contracted) Building Official is Shane Kittendorf with CAP Government, Inc. On December 31, 2023, the 2023 Florida Building Code came into effect. Consequently, our Building Official reviewed and updated the relevant code sections included as Exhibit A of the attached Ordinance and these have been applied to permits since December 31, 2024. A CAP representative will be in attendance at the meeting to answer any questions.

Summary update of changes for Chapter 1 of the Florida Building Code (2023) 8th Edition

Notable Updates and Changes

- Items listed in **Red** are Legislature adopted
- Items listed in **Blue** are new BOAF model code updates along with other utilized adopted jurisdictional codes to assist with a complete Chapter 1 for the Town of Lake Park. The intent is to provide clarity, uniformity, efficiency and consistency in the application of the policies and procedures to meet compliance with the building code.

Section 101 - SCOPE AND GENERAL REQUIREMENTS

- 101.2 (2) relocation Existing buildings. The provisions of the Florida Existing Building Code along with Chapter 54 of Town Ordinance to section 101.4.7
- 101.2 (2) addition of Code requirements that address snow loads and earthquake protection shall not be utilized or enforced.
- 101.4.7 Existing buildings. The provisions of the Florida Existing Building Code along with Chapter 54 of Town Ordinance shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

Section 104 - DUTIES AND POWERS OF BUILDING OFFICIAL

- 104.11 The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved by the Building Official.

Section 105 – PERMITS

- 105.3.1.2 Professional Engineer Requirement
 - (2) Fire sprinkler systems under statute 633 have been updated to allow a licensed Fire Sprinkler contractor to design systems to a new threshold of 49 sprinkler heads or alteration of an existing facility up to 249 sprinkler heads before a professional engineer is required.
 - (4) Exception: Simplified Permitting process for Fire Alarm and Fire Sprinkler system only projects which are not part of a larger scope of work. A Complete application submittal is required, except the plans are not required but shall be onsite by the contractor.
- 105.3.1.3 In reviewing applications for a building permit the Jurisdiction shall not request information more than three times.
 - First Round Review Comments – If the applicant returns comments within 30 days, the jurisdiction shall review within 15 days after receiving such information.
 - Second Review Comments – If the applicant returns comments within 30 days, the jurisdiction shall review within 10 days after receiving such information.
 - Before a third request for additional information may be made, the applicant must be offered an opportunity to meet with the local government to attempt to resolve outstanding issues. If the applicant returns comments within 30 days, the jurisdiction shall review within 10 days after receiving such information.

- 105.3.8 A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.
- 105.4.1.5 After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto.

Section 107 - SUBMITTAL DOCUMENTS

- 107.1 All Data shall be submitted electronically unless approved by the Building Official.
- 107.3.4.0.1 Other than Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or additions costing fifteen thousand dollars (\$15,000.00) or more, shall be prepared by, and each sheet shall bear the signature and seal of an Architect or Engineer.
- 107.3.4.0.2 Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or additions costing thirty thousand dollars (\$30,000.00) or more, shall be prepared by an Architect or Engineer. Each sheet shall be signed and sealed by the Architect or Engineer.
- 107.3.4.0.3 Plans and specifications for work that is preponderantly of an architectural nature shall be prepared by a Registered Architect, and work that involves extensive computation based on structural stresses shall, in addition, be prepared by a Professional Engineer.
- 107.3.4.0.4 Plans and specifications for work that is preponderantly of a mechanical or electrical nature shall, at the discretion of the Building Official, be prepared by a Professional Engineer.
- 107.3.4.0.5 Compliance with the specific minimum requirements of this Code shall not be deemed sufficient unless determined through rational analysis.
- 107.3.4.0.6 For any work involving structural design, the Building Official may require that plans, calculations, and specifications be prepared by a Professional Engineer, regardless of the cost of such work.
- 107.3.4.0.7 Electrical plans and specifications for new construction shall be prepared by a Professional Engineer if they exceed specific thresholds.
- 107.3.4.0.8 All plans shall be properly digitally signed or properly physically signed per Fs. 471 or Fs. 481.

- 107.7 If the local building code administrator, plans examiner or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant.

Section 109 – FEES

- 109.2.1 Types of Fees Enumerated

Section 110 – INSPECTIONS

- 110.3 The Required Inspections section has been completely revamped to provide clarity, uniformity, efficiency and consistency of the section.
 - Building (7)(7.2) A final survey shall be provided to certify placement of the building on the site, illustrate all surrounding setback dimensions, easements, slopes for proper drainage and shall be available at the job site or submitted electronically for review by the building official.
- 110.12.1 – 110.12.11 Milestone Inspection Program for Condos and Co-Op over 3-stories in height. The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

Recommended Motion: I move to ADOPT Ordinance 05-2024 on second reading.

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE I, SECTION 54-8 OF THE TOWN CODE PERTAINING TO THE TOWN'S LOCAL AMENDMENTS TO CHAPTER ONE OF THE FLORIDA BUILDING CODE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT ; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2023, the Florida Legislature enacted an updated version of the Florida Building Code, amending the minimum building construction standards which must be adopted and applied by all local governments in Florida; and

WHEREAS, the Florida Building Code and amendments thereto which have been enacted by the Legislature are codified in Section 553.73 Florida Statutes; and

WHEREAS, Section 553.73(4)(A) Florida Statutes, authorizes local governments to adopt local amendments to Chapter One of the Florida Building Code that are more stringent than the minimum state standards set forth therein; and

WHEREAS, the Palm Beach County Building Code Advisory Board recommends that all local governments in Palm Beach County adopt said local amendments to create uniformity within the Palm Beach County; and

WHEREAS, the Town's Building Official recommends that the Town Commission adopt the local amendments prepared and recommended by the Palm Beach County Building Code Advisory Board; and

WHEREAS, the Town Commission has determined that the amendments incorporated herein will promote the health, safety and general welfare of the residents and businesses of the Town of Lake Park.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, THAT:

Section 1: Chapter 54. Buildings and Building Regulations of the Code of Ordinances of the Town of Lake Park attached hereto and incorporated herein as **Exhibit "A"** is hereby amended to update references to the Florida Building Code and to adopt local amendments to Chapter 1 of the Florida Building Code; providing that Chapter 54 shall hereafter read as follows:

Section 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Repeal of Laws in Conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 5. Effective Date. This Ordinance shall take effect immediately upon adoption.

Sec. 54-7. - Florida building code adopted.

There is adopted by reference as fully and to the same extent as if set out at length herein the Florida Building Code, as amended from time to time, as the minimum construction standards for the town; one copy shall be kept on file in the office of the town manager, and another copy shall be kept in the department of community development.

(Code 1978, § 7-16; Ord. No. 12-1991, § 1, 8-20-1991; Ord. No. 27-1993, § I, 12-15-1993; Ord. No. 3-1996, § I, 2-21-1996; Ord. No. 3-2005, § 2(7-16), 7-20-2005; Ord. No. 14-2007, § 2, 8-1-2007)

Sec. 54-8. - Chapter One amendments adopted.

CHAPTER ONE—ADMINISTRATION

Section 101. ~~General.~~ Scope and General Requirements

101.1 *Title.* These regulations shall be known as the Florida Building Code hereinafter referred to as "this code."

101.2 *Scope.* The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures in the Town.

Exceptions:

1. Detached one- and two-family dwellings and multiple single-family dwellings (Townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the Florida Building Code, Residential.
2. ~~Existing buildings undergoing repair, alterations or additions or change of occupancy shall comply with Chapter 54 of this Code. Code requirements that address snow loads and earthquake protection shall not be utilized or enforced.~~

101.2.1 *Appendices.* Provisions in the appendices shall not apply unless specifically adopted. Town of Lake Park has adopted Appendix "Q" in the Florida Building Code, Residential Volume: Tiny Houses and Appendix "F" in the Florida Building Code, Plumbing Volume: Proposed Construction Building Codes for Turf and Landscape Irrigation Systems.

101.2.2 *Florida Building Code, Residential.* Construction standards or practices which are not covered by Florida Building Code, Residential volume shall be in accordance with the provisions of Florida Building Code, Building.

101.3 *Intent.* The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters, code officials, and emergency responders during emergency operations.

101.3.1 *Quality Control.* Quality control of materials and workmanship is not within the purview of this code except as it relates to the purposes stated herein.

101.3.2 *Warranty and Liability.* The permitting and inspection of any building, system, or plan by the Town, under the requirements of this code, shall not be construed in any court as a warranty of the physical condition of such building, system, or plan, or their adequacy. The Town shall not be liable in tort for damages or hazardous or illegal condition or inadequacy in such building, system, or plan, nor for any failure of any component of such, which may occur subsequent to such inspection or permitting. Further, no Building Department or

employee shall be liable in tort for damage from such conditions, in accordance with Section 768.28(9)(a) F.S., as may be amended or replaced.

101.4 *Referenced codes.* The other codes listed in Sections 101.4.1 through 101.4.9 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 *Gas.* The provisions of the Florida Building Code pertaining to Fuel Gas shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

101.4.2 *Mechanical.* The provisions of the Florida Building Code, Mechanical shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

101.4.3 *Plumbing.* The provisions of the Florida Building Code, Plumbing shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system.

101.4.4 *Property maintenance.* The provisions of Chapter 54-8 and Chapter 16 of the Town Code shall apply.

101.4.5 *Fire prevention.* For provisions related to fire prevention, refer to the Florida Fire Prevention Code. The Florida Fire Prevention Code shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression, automatic sprinkler systems and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

101.4.6 *Energy.* The provisions of the Florida Building Code, Energy Conservation shall apply to all matters governing the design and construction of buildings for energy efficiency.

101.4.7 Existing buildings. The provisions of the Florida Existing Building Code along with Chapter 54 of Town Ordinance shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

101.4.~~7~~(8) *Accessibility.* For provisions related to accessibility, refer to Florida Building Code, Accessibility.

101.4.~~8~~(9) *Manufactured buildings.* For additional administrative and special code requirements, see Section 458 of the Florida Building Code, under Building, and Rule 61-41, Florida Administrative Code.

101.4.~~9~~(10) *Electrical.* The provisions of Chapter 27 of the Florida Building Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

101.4.~~10~~(11) *Flood Damage Prevention.* The Town of Lake Park floodplain management Ordinance codified in Chapter 60 of the Town Code shall be considered part of the requirements of Chapter 54 relative to flood control. Conflicting requirements between the Florida Building Code and Chapter 60 of the Town Code shall be resolved in favor of the requirement that offers the greatest degree of flood damage prevention or alternatives that would provide an equivalent degree of flood damage prevention and an equivalent method of construction.

Section 102. *Applicability.*

102.1 *General.* Where there is a conflict between a general code requirement and a specific code requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this Chapter 54 specify different materials, methods of construction or other requirements, the most restrictive shall govern.

102.1.1 The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair or demolition of public or private buildings, structures or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code, Building to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

102.2 *Building.* The provisions of the Florida Building Code shall apply to the construction, erection, alteration, modification, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every public and private building, structure or facility or floating structure, or any appurtenances connected or attached to such buildings, structures or facilities. Additions, alterations, repairs and changes of use or occupancy group in all buildings and structures shall comply with the provisions provided in Chapter 54 of this code and the Florida Building Code, Existing Building. The following buildings, structures and facilities, except for those located in a Special Flood Hazard Area, are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the legislature and provided by law:

- (a) Building and structures specifically regulated and preempted by the federal government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of Part II (Sections 553.501-553.513, F.S.) relating to accessibility by persons with disabilities. Permits shall be required for structural support and tie down, electrical supply, and utility connections to such mobile or modular structures, as required by this jurisdiction.
- (f) Those structures or facilities of electric utilities, as defined in Section 366.02, F.S., which are directly involved in the generation, transmission or distribution of electricity.
- (g) Temporary sets, assemblies or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (i) Family mausoleums not exceeding 250 square feet (23m ² -) in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (j) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- (k) A building or structure having less than 1,000 square feet (93 m ²) which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the

same dimensions and condition as existed on, or prior to January 1, 2011, if the building or structure:

1. Is not rented or leased or used as a principal residence;
2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
3. Is not connected to an off-site electric power or water supply.

(I) A drone port as defined in s. 330.41(2).

(M) Service or utility providers of water, sewer, storm, gas, cable, telephone, or other similar utility systems are exempt to the point of service connection for the building or structure.

However, these structures may be subject to local zoning and/or land development regulations.

102.2.1 In addition to the requirements of Section 553.79 and 553.80, F.S., facilities subject to the provisions of Chapter 395, F.S. (Hospital Licensing and Regulation), and Chapter 400, F.S. Parts II and VIII (Nursing Homes), shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of Chapter 395, F.S., and Part II of Chapter 400, F.S., and the certification requirements of the federal government.

102.2.2 Residential Buildings or structures moved into or the Town shall not be required to be brought into compliance with the state minimum building code in force at the time the building or structure is moved, provided:

1. The building or structure is structurally sound and is in occupiable condition for its intended use;
2. The occupancy use classification for the building or structure is not changed as a result of the move;
3. The building is not substantially remodeled;
4. Current fire code requirements for ingress and egress are met;
5. Electrical, gas and plumbing systems meet the codes in force at the time of original construction and are operational and safe for reconnection;
6. Foundation plans are sealed by a professional engineer or architect licensed to practice in this state, if required by the applicable Florida Statutes for all buildings or structures of the same residential occupancy class; and
7. The requirements of Florida Building Code, Existing Building Volume, are also satisfied.

102.2.3 The building official shall apply the same standard to a moved residential building or structure as that applied to the remodeling of any comparable residential building or structure to determine whether the moved structure is substantially remodeled. The cost of the foundation on which the moved building or structure is placed shall not be included in the cost of remodeling for purposes of determining whether a moved building or structure has been substantially remodeled.

102.2.4 This section does not apply to the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Financial Services to inspect state-owned buildings and boilers.

102.2.5 Each enforcement district or local enforcement agency shall be governed by a board, the composition of which shall be determined by the affected localities.

1. At its own option, each enforcement district or local enforcement agency may adopt rules granting to the owner of a single-family residence one or more exemptions from the Florida Building Code relating to:
 - a. Addition, alteration, or repairs performed by the property owner upon his or her own, provided any addition or alteration or repair shall not exceed 1,000 square foot (93m²) or the square footage of the of the primary structure, whichever is less.
 - b. Addition, alteration, or repairs by a non-owner within a certain cost limitation set by rule, provided the total cost shall not exceed \$5,000 within any 12 month period.
 - c. Building plan review and inspection fees.
 2. However, the exemptions under subparagraph 1 do not apply to single-family residences that are located in mapped flood hazard areas, as defined in the code, unless the enforcement district or local enforcement agency has determined that the work, which is otherwise exempt, does not constitute a substantial improvement, including the repair of substantial damage, of such single-family residences.
 3. Each code exemption, as defined in sub-subparagraphs 1a, 1b., and 1c shall be certified to the local board 10 days prior to implementation and shall only be effective in the territorial jurisdiction of the enforcement district or local enforcement agency implementing it.
 4. However, each enforcement district or local enforcement agency may establish an alternative permitting program for replacing nonstructural components of building systems in a residential dwelling unit. A licensed contractor performing such work for the resident shall also be exempt from individual permits and inspections if either the owner or the licensed contractor obtains a valid Annual Permit per Section 105.1.1 of this Code and all such work is reported as required in Section 105.1.2 of this Code for compliance evaluation. No added capacity, system expansion or new building work of any type shall be excluded from individual permit and inspection by this provision.
- 102.2.6 This Code does not apply to traditional swings and other playground equipment accessory to a one- or two-family dwelling, as determined by the building official. Exempt structures covered under this section may still be subject to zoning permits.
- Exception:* Electrical service to such playground equipment shall be in accordance with Chapter 27 of this code.
- 102.3 *Application of references.* References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.
- 102.4 *Referenced codes and standards.* The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.4.1 and 102.4.2.
- 102.4.1 *Conflicts.* Where a conflict occurs between provisions of this code and other codes and standards referenced herein, the provisions of this Chapter 54 shall apply.
- 102.4.2 *Provisions in referenced codes and standards.* Where the extent of the provisions to a referenced code or standard includes subject matter that is within the scope of this Chapter 54 or the Florida Codes listed in Section 101.4, the provisions of this Chapter 54 or the Florida Codes listed in Section 101.4, as applicable, shall take precedence over the provisions in a referenced code or standard.
- 102.5 *Partial invalidity (Reserved FBC).* In the event that any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.

102.6 *Existing structures.* The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically provided in this code, the Florida Building Code, Existing ~~Building~~, the Florida Fire Prevention Code, or the Property Maintenance Code.

102.6.1 *Buildings not previously occupied.* A building or portion of a building that has not been previously occupied or used for its intended purpose in accordance with the laws in existence at the time of its completion shall comply with the provisions of the Florida Building Code or Florida Residential Code, as applicable, for new construction or with any current permit for such occupancy.

102.6.2 *Buildings previously occupied.* The legal occupancy of any structure existing on the date of adoption of the Town Code shall be permitted to continue without change, except as is specifically covered in this code, Town property maintenance Chapter 54 and Chapter 16, the Codes referenced in Section 101.4, or the Florida Fire Prevention Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

102.7 *Relocation of manufactured buildings.*

1. Relocation of an existing manufactured building does not constitute an alteration.
2. A relocated building shall comply with wind speed requirements of the new location, using the appropriate wind speed map. If the existing building was manufactured in compliance with the Standard Building Code (prior to March 1, 2002), the wind speed map of the Standard Building Code shall be applicable. If the existing building was manufactured in compliance with the Florida Building Code (on or after March 1, 2002), the wind speed map of the Florida Building Code shall be applicable.
3. A relocated building shall comply with the flood hazard area requirements of the new location, if applicable

102.8 *Existing mechanical equipment.* The Town may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code until the equipment is being replaced or moved during reroofing and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

Section 103. *Building Division.*

103.1 *Establishment.* There is hereby established a division within the Town's Community Development Department to be called the Building Division and the person in charge shall be known as the Building Official. All code officials employed by the division shall be certified in accordance with Chapter 468, Part XII, F.S.

103.2 *Restrictions on employees.* An officer or employee connected with the department, except one whose only connection is as a member of the board established by this code, shall not be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building, structure, service, system, or in the making of plans or of specifications thereof, unless he/she is the owner of such. This officer or employee shall not engage in any other work which is inconsistent with their duties or conflict with the interests of the department, except as instructors.

Section 104. *Duties and Powers of The Building Official.*

104.1 *General.* The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code, and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

- 104.2 *Applications and permits.* The building official shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of buildings, structures, and service systems, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.
- 104.2.1 *Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas.* For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the building official shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the building official determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements of Sections 1612 or R322 of this code, and the Town of Lake Park floodplain management Ordinance codified in Chapter 60 of the Town Code
- 104.3 *Notices and orders.* The building official shall issue all necessary notices or orders to ensure compliance with this code.
- 104.4 *Inspections.* The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.
- 104.5 *Identification.* The building official shall carry proper identification, as issued by the Town, when inspecting structures or premises in the performance of duties under this code.
- 104.6 *Right of entry.*
- 104.6.1 Where it is necessary to make an inspection to enforce any of the provisions of this code, or where the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, or premises, unsafe, dangerous or hazardous, the building official is authorized to enter the building, structure or premises at all reasonable times to inspect or to perform any duty imposed by this code, provided that if such building, structure or premises are occupied, that credentials be presented to the occupant and entry requested. If such building, structure, or premises are unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, or premises, and request entry. If entry is refused, the building official shall have recourse to every remedies provided by law to secure entry.
- 104.6.2 When the building official has first obtained a proper inspection warrant in accordance with Chapter 933, F.S. or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.
- 104.7 *Department records.* The Town's building department shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records per Chapter 119, F.S.
- 104.8 *Liability.* The building official, contracted service consultant, any member of the board of appeals or employee charged with the enforcement of this code, while acting for the Town in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any

act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or contracted service consultant or employee or member because of an act performed by that officer or contracted service consultant or employee or member in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the Town until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

104.9 *Approved materials and equipment.* Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

104.9.1 *Used materials and equipment.* The use of used, recycled, or reclaimed materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 *Modifications.* Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the building department.

104.10.1 (Reserved FBC) Flood hazard areas. The Building Official shall not grant modifications to any provision required in flood hazard areas as established by Section 1612.3 unless a determination has been made that:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards of Section 1612 inappropriate.
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Through written evidence by the Applicant, the difference between the design flood elevation and the elevation to which the building is to be built; a statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation; and stating that construction below the design flood elevation increases risks to life and property.

~~104.11 *Alternative materials, design and methods of construction and equipment.* The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.~~

104.11 *Alternative materials, design and methods of construction and equipment.* The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall

be approved where the building official finds that the proposed alternative meets all of the following:

1. The alternative material, design or method of construction is satisfactory and complies with the intent of the provisions of this code; and

2. The material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code as it pertains to the following:

2.1 Quality.

2.2 Strength

2.3 Effectiveness

2.4 Fire Resistance

2.5 Durability

2.6 Safety

2.7 Level of Sanitation

Where the alternative material, design or method of construction is not approved, the building official shall respond in writing, stating the reasons why the alternative was not approved.

104.11.1 *Research reports.* Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 *Tests.* Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

104.12 *Requirements not covered by code.* Any requirements necessary for the strength, stability or proper operation of an existing or proposed building, structure, electrical, gas, mechanical or plumbing system, or for the public safety, health and general welfare, not specifically covered by this or the other technical codes, shall be determined by the building official.

Section 105. *Permits.*

105.1 *Required.* Any contractor, owner, or agent authorized in accordance with Chapter 489, F.S. who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building, tenancy or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical, plumbing or fire protection system, or accessible or flood resistant site element, the installation of which is regulated by this code, the Town of Lake Park floodplain management Ordinance codified in Chapter 60 of the Town Code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

105.1.1 *Annual facility permit.* In lieu of an individual permit for each alteration to an existing electrical, gas, mechanical, plumbing or interior nonstructural office system(s), the building official is authorized to issue an annual permit for any occupancy to facilitate routine or emergency service, repair, refurbishing, minor renovations of service systems, or manufacturing equipment installations/relocations. The building official shall be notified of major changes and shall retain the right to make inspections at the facility site as deemed

necessary. An annual facility permit shall be assessed with an annual fee and shall be valid for one year from date of issuance. A separate permit shall be obtained for each facility and for each construction trade, as applicable. The permit application shall contain a general description of the parameters of work intended to be performed during the year.

105.1.2 *Annual facility permit records.* The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated. The building official is authorized to revoke such permit, and deny future annual permits, if code violations are found to exist.

105.1.3 *Food permit.* As per Section 500.12, F.S., a food permit from the Department of Agriculture and Consumer Services is required of any person who operates a food establishment or retail store.

105.1.4 *Public swimming pool.* The Town may not issue a building permit to construct, develop, or modify a public swimming pool without having first received an application, whether complete or incomplete, for an operating permit pursuant to Section 514.031, Florida Statutes. A certificate of completion or occupancy may not be issued until such operating permit is issued. The town shall conduct a review of the building permit application upon filing and in accordance with Chapter 553, Florida Statutes. The town may confer with the Department of Health, if necessary but may not delay the building permit application review while awaiting comment from the Department of Health.

105.2 *Work exempt from permit.* Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction, to include work in any special flood hazard area. Exemptions granted under this section do not relieve the owner or contractor from their duty to comply with applicable provisions of the Florida Building Code and requirements of the Town's Floodplain Ordinance. As determined by the building official, permits shall not be required for the following:

Building:

1. Building permits are not required for replacement or repair work having value of less than \$1,000.00, providing, however, that such work will not adversely affect the structural integrity, fire rating, exit access, egress, or any local zoning requirements.
2. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work, with no electrical or plumbing work for one and two-family dwellings.
3. Temporary motion picture, television and theater sets and scenery.
4. Traditional swings and other standard playground equipment accessory to detached one- and two-family dwellings, but they may be subject to Zoning permits.
5. Retractable awnings supported by an exterior wall and do not require additional support or electric in Residential (one and two-family), Groups R-3 and U occupancies, but they may be subject to Zoning permits.
6. Non fixed and movable fixtures, cases, racks, and counters not over 5 feet 9 inches (1753 mm) in height.

Electrical:

1. Repairs and maintenance: Repair or replacement of like common household electrical fixtures, switches, and outlets on the load side of the electrical source. Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.
2. Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment

and wiring for a power supply and the installations of towers and antennas, except as exempted by Florida Statute Chapter 489.503(14).

3. Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part which does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.
8. The installation, replacement, removal or metering of any load management control device where installed by a utility service provider.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.
3. The replacement of common household plumbing fixtures to existing supply lines and outlets in one- and two-family dwellings. This does not include water heaters bathtubs, and showers.

105.2.1 *Emergency repairs.* Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official. Notification shall be given to the building official including the work address, nature of emergency and scope of work immediately, or by next business day.

105.2.2 *Minor repairs.* Ordinary minor repairs or installation of replacement parts may be made with the approval of the building official, without a permit, provided the repairs do not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring systems or mechanical equipment or

other work affecting public health or general safety, and such repairs shall not violate any of the provisions of the technical codes.

105.2.3 *Public service agencies.* (Reserved FBC) A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

105.3 *Application for permit.* To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the department for that purpose.

Permit application forms shall be in the format prescribed by a local administrative board, if applicable, and must otherwise comply with the requirements of Sections 713.135(5) and (6), F.S.

Each application shall be inscribed with the date of application, and the code in effect as of that date. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the Town on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

Effective October 1, 2017, a local enforcement agency shall post each type of building permit application on its website. Completed applications must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in portable document format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Payments, attachments, or drawings required as part of the permit application may be submitted in person in a nonelectronic format, at the discretion of the building official.

105.3.1 *Action on application.* Except for applications filed without the prerequisite fees, the building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. No review will be performed prior to receipt of required submittal fees. If submittal fees are not paid within ten (10) days of receipt of an application, the application shall become null and void. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore as soon as practicable. When authorized through contractual agreement with a school board, in acting on applications for permits, the building official shall give first priority to any applications for the construction of, or addition or renovation to, any school or educational facility.

105.3.1.1 If a state university, Florida college or public school district elects to use the Town's code enforcement offices, fees charged by the Town for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges and public school districts shall not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

105.3.1.2 No permit may be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit provides to Town any of the following documents which apply to the construction for which the permit is to be issued and which shall be prepared by or under the direction of an engineer registered under Chapter 471, F.S.:

1. Plumbing documents for any new building or addition which requires a plumbing system with more than 250 fixture units or which costs more than \$125,000.

2. Fire sprinkler documents for any new building or addition which includes a fire sprinkler system which contains 50 or more sprinkler heads. Personnel as authorized by chapter 633 Florida Statutes, may design a new fire sprinkler protection system of 49 or fewer heads~~sprinklers; and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition or deletion of 249 or fewer sprinklers and the addition of up to 49 sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in this Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration.~~~~not more than 49 heads, notwithstanding the size of the existing fire sprinkler system.~~
3. Heating, ventilation, and air-conditioning documents for any new building or addition which requires more than a 15-ton-per-system capacity which is designed to accommodate 100 or more persons or for which the system costs more than \$125,000. This paragraph does not include any document for the replacement or repair of an existing system in which the work does not require altering a structural part of the building or for work on a residential one, two, three or four-family structure.

An air- conditioning system may be designed by an installing air-conditioning contractor certified under Chapter 489, Florida Statutes, to serve any building or addition which is designed to accommodate fewer than 100 persons and requires an air-conditioning system with a value of \$125,000 or less; and when a 15-ton-per system or less is designed for a singular space of a building and each 15-ton system or less has an independent duct system. Systems not complying with the above require design documents that are to be sealed by a professional engineer.

Example 1: When a space has two 10-ton systems with each having an independent duct system, the contractor may design these two systems since each unit (system) is less than 15 tons.

Example 2: Consider a small single-story office building which consists of six individual offices where each office has a single three-ton package air conditioning heat pump. The six heat pumps are connected to a single water cooling tower. The cost of the entire heating, ventilation and air-conditioning work is \$47,000 and the office building accommodates fewer than 100 persons. Because the six mechanical units are connected to a common water tower this is considered to be an 18-ton system.

NOTE: It was further clarified by the Commission that the limiting criteria of 100 persons and \$125,000 apply to the building occupancy load and the cost for the total air-conditioning system of the building.

4. Any specialized mechanical, electrical, or plumbing document for any new building or addition which includes a medical gas, oxygen, steam, vacuum, toxic air filtration, halon, or fire detection and alarm system which costs more than \$5,000.

Exception:

Simplified permitting process for fire alarm system projects. —

(1) As used in this section, the term:

(a) "Component" means valves, fire sprinklers, escutcheons, hangers, compressors, or any other item deemed acceptable by the local enforcing agency. For purposes of this paragraph, a valve does not include pressure-regulating, pressure-reducing, or pressure-control valves.

(b) "Contractor" means a person who:

1. Is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489, Florida Statutes; or

2. Is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal.

(c) "Fire alarm system project" means a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or condominium building.

(d) "Fire sprinkler system project" means a fire protection system alteration of a total of 20 or fewer fire sprinklers in which the sprinklers are of the same K-factor and located in spaces where there is no change of hazard classification or increased system coverage area, or the installation or replacement of an equivalent fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. For purposes of this paragraph, a component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

(2) (a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project, to submit a completed application and payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project or a fire sprinkler system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project or fire sprinkler system project to ensure compliance with applicable codes and standards. If a fire alarm system project or fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5) (a) For a fire sprinkler alarm system project, a contractor must keep a copy of the plans and specifications at a fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

(b) For a fire sprinkler system project to alter an existing fire protection system, a contractor must keep a copy of the plans and specifications at the fire sprinkler system project worksite and make

such plans and specifications available to the inspector at each inspection.

(c) For a fire sprinkler system project to install or replace a component, a contractor must keep a copy of the manufacturer's installation instructions and any pertinent testing instructions needed to certify or accept the component at the fire sprinkler system project worksite and make such documents available to the inspector at each inspection.

5. Electrical documents. See Florida Statutes, Section 471.003(2)(h) Any electrical or plumbing or air-conditioning and refrigeration system meeting the following thresholds are required to be designed by a Florida Registered Engineer. The system, Requires an electrical system with a value of over \$125,000; and Requires an aggregate service capacity of over 600 amperes (240 volts) on a residential electrical system or over 800 amperes (240 volts) on a commercial or industrial electrical system;

NOTE: It was further clarified by the Commission that the limiting factor of 240 volt or over is required to be designed by an Engineer.

Documents requiring an engineer seal by this part shall not be valid unless a professional engineer who possesses a valid certificate of registration has signed, dated, and stamped such document as provided in Section 471.025, Florida Statutes.

6. All public swimming pools and public bathing places defined by and regulated under Chapter 514, Florida Statutes

105.3.1.3 Reviewing application for building permit.

1. When reviewing an application for a building permit, a local government may not request additional information from the applicant more than three times, unless the applicant waives such limitation in writing.

2. If a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 15 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;
- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

3. If a local government makes a second request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;
- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

4. Before a third request for additional information may be made, the applicant must be offered an opportunity to meet with the local government to attempt to resolve outstanding issues. If a local government makes a third request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information unless the applicant waived the local government's limitation in writing, determine that the application is complete and:

- a. Approve the application;
- b. Approve the application with conditions; or
- c. Deny the application.

5. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, must process the application and either approve the application, approve the application with conditions, or deny the application.

105.3.2 *Time limitation of application.* An application for a permit for any proposed work shall be deemed to have been abandoned and ~~shall become~~ null and void if required application fees are not paid within 10 calendar days of filing, or 180 days after the date of filing, unless the Building Official determines that such application has been pursued in good faith or that the permit was properly issued. The Building Official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested by a written request prior to the abandonment date, which includes the justification for the extension. Abandoned applications shall be subject to destruction in accordance with state law. The fee for extension of a permit application shall be set forth by the administrative authority. There may be fees or requirements from other government agencies for permit application extensions.

105.3.3 An enforcing authority may not issue a building permit for any building construction, erection, alteration, modification, repair or addition unless the permit either includes on its face or there is attached to the permit the following statement: "NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county such as the requirement for Home or Property Owners Association approval, and there may be additional permits required from other governmental entities such as water management districts, state agencies or federal agencies."

105.3.4 A building permit for a single-family residential dwelling must be issued within 30 working days of application therefore unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the Town's laws or ordinances.

105.3.5 Identification of minimum premium policy. Except as otherwise provided in Chapter 440, F.S., Workers' Compensation, every employer shall, as a condition to receiving a building permit, show proof that it has secured compensation for its employees as provided in Sections 440.10 and 440.38, F.S.

105.3.6 *Asbestos removal contractor exemption.* Refer to Section 105.9 of this code for additional requirements. A licensed asbestos removal contractor is not required when moving, removal or disposal of asbestos-containing materials on a residential building where the owner occupies the building, the building is not for sale or lease, and the work is

performed according to the owner-builder limitations provided in this paragraph and Florida Statutes Chapter 489.103(7). To qualify for exemption under this paragraph, an owner must personally appear and sign the building permit application. The permitting agency shall provide the person with a disclosure statement in substantially the following form:

Disclosure Statement: State law requires asbestos abatement to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own asbestos abatement contractor even though you do not have a license. You must supervise the construction yourself. You may move, remove or dispose of asbestos-containing materials on a residential building where you occupy the building and the building is not for sale or lease, or the building is a farm outbuilding on your property. If you sell or lease such building within 1 year after the asbestos abatement is complete, the law will presume that you intended to sell or lease the property at the time the work was done, which is a violation of this exemption. You may not hire an unlicensed person as your contractor. Your work must be done according to all local, state and federal laws and regulations which apply to asbestos abatement projects. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances.

105.3.7 *Applicable Code for Manufactured Buildings.* Manufacturers should be permitted to complete all buildings designed and approved prior to the effective date of a new code edition, provided a clear signed contract is in place. The contract shall provide specific data mirroring that required by an application for permit, specifically, without limitation, date of execution, building owner or dealer, and anticipated date of completion. However, the construction activity must commence within 180 days of the contract's execution. The contract is subject to verification by the Department of Business and Professional Regulation.

105.3.8 A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

105.3.89 *Public right of way.* A permit shall not be given by the building official for the construction, alteration, or relocation of any building, structure, equipment or system impacting any street, alley or public lane, unless the applicant has received a right-of-way permit from the authority having jurisdiction over the right-of-way.

105.4 *Conditions of the permit.* The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the Town, code, or regulation. Permits presuming to give authority to violate or cancel the provisions of this code or of any other federal, state, or local law, or any other ordinances of the Town, code, or regulation shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other federal, state, or local law, or any other ordinances of the Town, code, or regulation.

105.4.1 *Permit intent.* A permit issued shall be construed to be a license to proceed with the work and not as authority to violate, cancel, alter or set aside any of the provisions of the technical codes, nor shall issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans, construction or violations of this code. Every permit issued shall become invalid (inactive or expired) unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.

105.4.1.1 If work has commenced and the permit is revoked, becomes null and void or expires because of lack of progress or abandonment, a new permit, or revalidation of

the original permit, covering the proposed construction shall be obtained before proceeding with the work.

105.4.1.2 If a new permit, or revalidation (90) of the original permit, is not obtained within 180 days from the date the initial permit became invalid (inactive or expired) it shall be deemed null and void, the building official is authorized to require that any work which has been commenced or completed be removed from the building site. Alternately, a new permit may be issued on application, providing the work in place and required to complete the structure meets all applicable regulations in effect at the time the initial permit became null and void and any regulations which may have become effective between the date of expiration and the date of issuance of the new permit.

105.4.1.3 Work shall be considered to be in active progress when the permit has received an approved inspection within 180 days. This provision shall not be applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process, or due to action by an environmental or archeological agency having jurisdiction. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 90 days each. The extension shall be requested in writing and justifiable cause demonstrated, prior to expiration.

105.4.1.4 The fee for renewal, reissuance, and extension of a permit shall be set forth on the Town's fee schedule adopted by resolution of the Town Commission. There may be fees or requirements from other government agencies for permit extensions and renewals.

105.4.1.5 After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto. If a local enforcing agency makes or requires substantive changes to the plans or specifications after a permit is issued, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide the information to the permitholder in writing.

105.5 *Expiration.* (Reserved FBC) Every permit issued shall become invalid (inactive or expired) unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Building Official is authorized to grant, in writing, one or more extensions of time, for periods not more than 90 days each. The extension shall be requested in writing and shall include good cause for the justification for the extension. If an additional 180 days passes while the permit is invalid (inactive or expired) it shall be deemed null and void and a new permit shall be applied for meeting the current codes in effect.

105.5.1 Additional options for closing a permit. Pursuant to Section 553.79(15), Florida Statutes, a property owner, regardless of whether the property owner is the one listed on the application for the building permit, may close a building permit by complying with the following requirements:

1. The property owner may retain the original contractor listed on the permit or hire a different contractor appropriately licensed in this state to perform the work necessary to satisfy the conditions of the permit and to obtain any necessary inspection in order to close the permit. If a contractor other than the original contractor listed on the permit is hired by the property owner to close the permit, such contractor is not liable for any defects in the work performed by the original contractor and is only liable for the work that he or she performs.

2. The property owner may assume the role of an owner-builder, in accordance with Sections 489.103(7) and 489.503(6), Florida Statutes.

3. If a building permit is inactive or expired and its requirements have been substantially completed and no life safety issues exist, as determined by the local enforcement agency, the permit may be closed without having to obtain a new building permit, and the work required to close the permit may be done pursuant to the building code in effect at the time the local enforcement agency received the application for the permit, unless the contractor has sought and received approval from the local enforcement agency for an alternative material, design or method of construction.

4. A local enforcement agency may close a building permit 6 years after the issuance of the permit, even in the absence of a final inspection, if the local enforcement agency determines that no apparent safety hazard exists.

105.5.1.1 For purposes of this section, the term “close” means that the requirements of the permit have been satisfied.

105.5.1.2 For the purposes of this subsection, an open permit shall mean a permit that has not satisfied all requirements for completion as listed in Section 110.

105.5.2 Responsibility to close permits. Closing out or resolving open, inactive or expired permits shall be the responsibility of the permit applicant and the property owner. Failure to close out or resolve open permits may result in a referral of the matter to the Palm Beach County Construction Industry Licensing Board (CILB) or Local Construction Regulation Board (LCRB), as applicable, and the Town’s Code Enforcement Division.

105.6 *Denial or Revocation of permits.* Whenever a permit required under this section is denied or revoked because the plan, or the construction, erection, alteration, modification, repair, or demolition of a building, is found by the Town to be not in compliance with the Florida Building Code, the town shall identify the specific plan or project features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant. If the Town’s Building Official or inspector finds that the plans are not in compliance with the Florida Building Code, he shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the town and permit applicant.

105.6.1 *Arm’s-length purchasers.* Pursuant to Section 553.79(16), Florida Statutes, a local enforcement agency may not deny issuance of a building permit to; issue a notice of violation to; or fine, penalize sanction or assess fees against an arm’s-length purchaser of a property for value solely because a building permit applied for by a previous owner of the property was not closed. The local enforcement agency shall maintain all rights and remedies against the property owner and contractor listed on the permit.

105.6.2 *Discipline.* Pursuant to Section 553.79(16), Florida Statutes, a local enforcement agency may not deny issuance of a building permit to a contractor solely because the contractor is listed on other building permits that were not closed. However, the local enforcement agency shall maintain all other rights and remedies against the contractor listed on the permit(s), including, but not limited to, potential referral to the appropriate licensing authority for potential discipline.

105.6.3 *Misrepresentation of application.* The Building Official may suspend or revoke a permit or approval, issued under the provisions of this Chapter 54, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

105.6.4 *Violation of code provisions.* The Building Official may require correction or revoke the permit upon determination by the Building Official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

- 105.7 *Placement of permit.* The building permit or copy shall be kept on the site of the work until the completion of the project.
- 105.8 *Notice of commencement.* In accordance with Section 713.135, F.S., when any person applies for a building permit, the Town shall print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."
- 105.9 *Asbestos.* The Town shall require each building permit for the demolition or renovation of an existing structure to contain an asbestos notification statement which indicates the owner's or operator's responsibility to comply with the provisions of Section 469.003, F.S., and to notify the Department of Environmental Protection of his or her intentions to remove asbestos, when applicable, in accordance with state and federal law. Refer to Section 105.3.6 "Asbestos Removal" above, for additional requirements.
- 105.10 *Certificate of protective treatment for prevention of termites.* A weather-resistant job-site posting board shall be provided to receive duplicate treatment certificates as each required protective treatment is completed, supplying one copy for the person the permit is issued to and another copy for the building permit files. The treatment certificate shall provide the product used, identity of the applicator, time and date of the treatment, site location, area treated, chemical used, percent concentration and number of gallons used, to establish a verifiable record of protective treatment. If the soil chemical barrier method for termite prevention is used, final exterior treatment shall be completed prior to final building approval. For a bait system, see Section 1816.1.7 of the Florida Building Code for contract document requirements.
- 105.11 *Notice of termite protection.* A permanent sign which identifies the termite treatment provider and need for re-inspection and treatment contract renewal shall be provided. The sign shall be posted near the water heater or electric panel.
- 105.12 *Work starting before permit issuance.* Upon written request and approval of the building official, the scope of work delineated in the building permit application and plan may be started prior to the final approval and issuance of the permit, provided any work completed is entirely at risk of the permit applicant and the work does not proceed past the first required inspection. This provision is only for the Florida Building Code; all other Agency approvals necessary for construction must be secured prior to this provision being applied.
- 105.13 *Phased permit approval.* After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes. This provision is only for the Florida Building Code; all other Agency approvals necessary for construction must be secured prior to this provision being applied.
- 105.14 *Permit issued on basis of an affidavit.* The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall inspect such work. The building official may

without any examination or inspections accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed. In addition, they shall certify conformity to the permit, and upon completion of the structure, electrical, gas, mechanical or plumbing systems make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Chapter 468, F.S., Part XII and that any person conducting inspections is qualified as a building inspector under Chapter 468, F.S. Part XII. Nothing aforesaid shall preclude plan review or inspections by the building official (See also Section 107.6 of this code).

Exception: Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.

- 105.15 *Opening protection.* When any activity requiring a building permit, not including roof covering replacement or repair work associated with the prevention of degradation of the residence, that is applied for on or after July 1, 2008, and for which the estimated cost is \$50,000 or more for a site built single family detached residential structures that is located in the wind borne debris region as defined in this Code and that has an insured value of \$750,000 or more, or, if the site built single family detached residential structures is uninsured or for which documentation of insured value is not presented, has a just valuation for the structure for purposes of ad valorem taxation of \$750,000 or more; opening protections as required within this Code or Florida Building Code, Residential for new construction shall be provided.

Exception: Single family residential structures permitted subject to the Florida Building Code are not required to comply with this section, unless constructed as a partially enclosed structure without opening protection.

- 105.16 *Inspection of existing residential building not impacted by construction.*

- (a) The town, local enforcing agency, and any local building code administrator, inspector, or other official or entity, may not require as a condition of issuance of a one- or two-family residential building permit the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.
- (b) This subsection does not apply to a building permit sought for:
 - 1. A substantial improvement as defined in Section 161.54, Florida Statutes or as defined in the Florida Building Code.
 - 2. A change of occupancy as defined in the Florida Building Code.
 - 3. A conversion from residential to nonresidential or mixed use pursuant to Section 553.507(2)(a), Florida Statutes or as defined in the Florida Building Code.
 - 4. A historic building as defined in the Florida Building Code.
- (c) This subsection does not prohibit the town, local enforcing agency, or any local building code administrator, inspector, or other official or entity, from:
 - 1 Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted in accordance with the prohibition in paragraph (a).

- 2 Inspecting any other building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which a permit has been sought in accordance with subsection (a), above.
- 3 Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to an inspection of that portion of the building, structure, or real property in accordance with subsection (a), above.
- 4 Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant issued in accordance with Sections 933.20 through 933.30, Florida Statutes.

105.17 *Streamlined low-voltage alarm system installation permitting.*

- (1) As used in this subsection, the term:
 - (a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489, Florida Statutes.
 - (b) "Low-voltage alarm system project" means a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in Section 489.505, Florida Statutes, operating at low voltage, as defined in the National Electrical Code Standard 70, and ancillary components or equipment attached to such a system, including, but not limited to, home-automation equipment, thermostats, and video cameras.
 - (c) "Low-voltage electric fence" means an alarm system, as defined in s. 489.505, that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.
 - (d) "Wireless alarm system" means a burglar alarm system or smoke detector that is not hardwired.
- (2) Notwithstanding any provision of this Chapter 54, this subsection shall apply to low-voltage alarm system projects for which a permit is required by a local enforcement agency. However, a permit is not required to install, maintain, inspect, replace, or service a wireless alarm system, including any ancillary components or equipment attached to the system.
- (3) 3. A low-voltage electric fence must meet all of the following requirements to be permitted as a low-voltage alarm system project and no further permit shall be required for the low-voltage alarm system project other than as provided in this section:
 - (a) The electric charge produced by the fence upon contact must not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission Standard No. 60335-2-76, Current Edition.
 - (b) A nonelectric fence or wall must completely enclose the low-voltage electric fence. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
 - (c) The low-voltage electric fence must be identified using warning signs attached to the fence at intervals of not more than 60 feet.
 - (d) The low-voltage electric fence shall not be installed in an area zoned exclusively for single-family or multi-family residential use.
 - (e) The low-voltage electric fence shall not enclose the portions of a property which are used for residential purposes.

- (4) This subsection does not apply to the installation or replacement of a fire alarm, or access control system affecting required means of egress as required by Florida Building Code Chapter 10, if a plan review is required.
- (5) The town shall make uniform basic permit labels available for purchase by a contractor to be used for the installation or replacement of a new or existing alarm system at a cost as indicated in Section 553.793, Florida Statutes. The local enforcement agency may not require the payment of any additional fees, charges, or expenses associated with the installation or replacement of a new or existing alarm.
 - (a) The town may not require a contractor, as a condition of purchasing a label, to submit information other than identification information of the licensee and proof of registration or certification as a contractor.
 - (b) A label is valid for 1 year after the date of purchase and may only be used within the issuance of the label. A contractor may purchase labels in bulk for one or more unspecified current or future projects.
- (6) A contractor shall post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site before commencing work on a project.
- (7) A contractor is not required to notify the town before commencing work on a low-voltage alarm system project. However, a contractor shall submit a Uniform Notice of a Low-Voltage Alarm System Project as provided under subsection (7) to the town within 14 days after completing a project. The town may take disciplinary action against a contractor who fails to timely submit a Uniform Notice of a Low-Voltage Alarm System for a project.
- (8) The Uniform Notice of a Low-Voltage Alarm System may be submitted electronically or by facsimile if all submissions are signed by the owner, tenant, contractor, or authorized representative of such persons. The Uniform Notice of a Low-Voltage Alarm System Project shall be in the format prescribed by the local enforcement agency and must comply with the requirements of Section 553.793(7) and (8), Florida Statutes.
- (9) A project with a low-voltage alarm system may be inspected by the town to ensure compliance with applicable codes and standards. If a project with a low-voltage alarm system fails an inspection, the contractor shall take such corrective actions as may be necessary to pass inspection.
- (10) A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with this section.
- (11) A uniform basic permit label shall not be required for the subsequent maintenance, inspection, or service of an alarm system that was permitted in accordance with this subsection.

The provisions of this act are not intended to impose new or additional licensure requirements on persons licensed in accordance with the applicable provisions of chapter 489, Florida Statutes.

Section 106. *Floor and Roof Design Loads.*

- 106.1 *Live loads posted.* Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 50 psf (2.40 kN/m²), such design live loads shall be conspicuously posted by the owner in that part of each story in which they apply, using durable signs. It shall be unlawful to remove or deface such notices. For residential construction where roof trusses have been designed for 30 psf for light attic storage, a durable sign shall be posted in the attic area at final building inspection.
- 106.2 *Issuance of certificate of occupancy.* A certificate of occupancy required by Section 111 shall not be issued until the floor load signs, required by Section 106.1, have been installed.

- 106.3 *Restrictions on loading.* It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.

Section 107. *Submittal Documents.*

- 107.1 *General.* Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets in electronic format in accordance with Florida Statute 553.79 unless otherwise approved by the building official with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, F.S. & 61G-15 F.A.C. or Chapter 481, F.S. & 61G-1 F.A.C. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional. Electronic media documents shall be submitted when required by the building official, and may require only one set of submittals.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

If the design professional is an architect, interior designer, or engineer legally registered under the laws of the State of Florida regulating the practice of architecture or interior design as provided for in Chapter 481, Florida Statutes, Part I, or landscape architecture as provided for in Chapter 481, Florida Statutes, Part II, or engineering as provided for in Chapter 471, Florida Statutes, then he or she shall affix his or her official seal to said drawings, specifications and accompanying data, as required by Florida Statute.

- 107.2 *Construction documents.* Construction documents shall be in accordance with Sections 107.2.1 through 107.2.5.

107.2.1 *Information on construction documents.* Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents shall be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official. Such drawings and specifications shall contain information, in the form of notes or otherwise, as to the quality of materials, where quality is essential to conformity with the technical codes. Such information shall be specific, and the technical codes shall not be cited as a whole or in part, nor shall the term "legal" or its equivalent be used as a substitute for specific information. All information, drawings, specifications and accompanying data shall bear the name and signature of the person responsible for the design. (See also Section 107.1).

107.2.1.1 For roof assemblies required by the code, the construction documents shall illustrate, describe and delineate the type of roofing system, materials, fastening requirements, flashing requirements and wind resistance rating that are required to be installed. Product evaluation and installation shall indicate compliance with the wind criteria required for the specific site or a statement by an architect or engineer for the specific site must be submitted with the construction documents.

107.2.1.2 *Additional data.* The Building Official may require details, computations, stress diagrams, and other data necessary to describe the construction or installation and the basis of calculations. All drawings, specifications and accompanying data required by the Building Official to be prepared by an architect or engineer shall be affixed with their official seal, signature and date in accordance with state law.

107.2.1.3 *Quality of building plans.* Building plans shall be drawn to a minimum 1/8 inch scale upon substantial paper, cloth or other acceptable medium. The building official

may establish through divisional policy, other standards for plans and specifications, in order to provide conformity to its record retention program. This policy may include such things as minimum size, shape, contrast, clarity, or other items related to records management. Electronic media must be compatible with the archive requirements of Florida Statutes.

107.2.2 *Fire protection system shop drawings.* Shop drawings for fire protection systems shall be submitted to indicate conformance to this Chapter 54 and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

107.2.3 *Means of egress.* The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

107.2.4 *Exterior wall envelope.* Construction documents for all buildings shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

107.2.5 *Exterior balcony and elevated walking surfaces.* Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier the construction documents shall include details for all element of the impervious moisture barrier system. The construction documents shall include manufacturer's installation instructions.

107.2.6 *Site plan.* The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The site plan shall include accessible parking and accessible routes as required by the FBC Accessibility when applicable. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

107.2.6.1 *Design flood elevations.* Where design flood elevations are not specified, they shall be established in accordance with Section 1612.3.1 of this code. Design flood elevations shall be uniformly specified utilizing the currently effective NAVD 88.

107.2.6.2 For the purpose of inspection and record retention, site plans for a building may be maintained in the form of an electronic copy at the worksite. These plans must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

107.2.7 *Structural information.* The construction documents shall provide the information specified in Section 1603 of this code and include shoring details, where applicable, for new construction and alterations. Where construction includes excavation, shoring details

shall demonstrate protection of the angle of repose for foundation systems of existing adjacent structures.

- 107.3 *Examination of documents.* The building official shall examine or cause to be examined the accompanying submittal documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

Exceptions:

1. Building plans approved pursuant to Section 553.77(3), F.S., and state-approved manufactured buildings are exempt from local codes enforcing agency plan reviews except for provisions of the code relating to erection, assembly or construction at the site. Erection, assembly (including utility crossover connections) and construction at the site are subject to local permitting and inspections. Photocopies of plans approved according to 61-41.009, FAC., shall be sufficient for local permit application documents of record for the modular building portion of the permitted project.
2. Industrial construction on sites where design, construction and fire safety are supervised by appropriately licensed design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to approval by the building official, from review of plans and inspections, providing the appropriate licensed design and inspection professionals certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and fire-safety inspectors.

- 107.3.1 *Approval of construction documents.* When the building official issues a permit, the construction documents shall be noted, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

- 107.3.2 *Previous approvals.* This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned and considered null and void. (See Section 105.5 of the code)

- 107.3.3 *Phased approval.* (See also Section 105.13 of this code.) The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

- 107.3.4 *Design professional in responsible charge.* (Reserved FBC) When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building. Those products which are

regulated by FAC Rule 61G20 shall be reviewed and approved in writing by the designer of record prior to submittal for jurisdictional approval.

107.3.4.0.1 Other than Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or additions costing fifteen thousand dollars (\$15,000.00) or more, shall be prepared by, and each sheet shall bear the signature and seal of an Architect or Engineer. If plans are in an electronic format each pdf sheet shall be digitally signed or if in a multi-page binder discipline specific package only the cover page of the pdf with an index needs to be digitally signed.

Exception: Roofing as set forth in FBC, Chapter 15.

107.3.4.0.2 Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or additions costing thirty thousand dollars (\$30,000.00) or more, shall be prepared by an Architect or Engineer. Each sheet shall be signed and sealed by the Architect or Engineer. If plans are in an electronic format each pdf sheet shall be digitally signed or if in a multi-page binder discipline specific package only the cover page of the pdf with an index needs to be digitally signed.

107.3.4.0.3 Plans and specifications for work that is preponderantly of an architectural nature shall be prepared by a Registered Architect, and work that involves extensive computation based on structural stresses shall, in addition, be prepared by a Professional Engineer.

107.3.4.0.4 Plans and specifications for work that is preponderantly of a mechanical or electrical nature shall, at the discretion of the Building Official, be prepared by a Professional Engineer.

107.3.4.0.5 Compliance with the specific minimum requirements of this Code shall not be deemed sufficient to assure that a building or structure complies with all of the requirements of this Code. It is the responsibility of the architect or engineer of record for the building or structure to determine through rational analysis what design requirements are necessary to comply with this Code.

107.3.4.0.6 For any work involving structural design, the Building Official may require that plans, calculations, and specifications be prepared by a Professional Engineer, regardless of the cost of such work.

107.3.4.0.7 Electrical plans and specifications for new construction shall be prepared by a Professional Engineer competent in the appropriate field of expertise for all buildings or structures having electrical services or systems as follows:

a. Residential systems requiring an aggregate electrical service capacity of more than 600 amperes or more than 240 volts.

b. Commercial or industrial systems requiring more than 800 amperes or more than 240 volts.

c. An electrical system having a cost value greater than one hundred twenty-five thousand dollars (\$125,000.00).

d. An electrical system for an assembly area having an area greater than five thousand (5,000) square feet.

e. A fire alarm or security alarm system that costs more than five thousand dollars (\$5,000.00)

107.3.4.0.8 Signatures and Seals. All plans, specifications, and other construction documents required to be prepared by an Architect or Engineer, shall be signed, dated, and sealed, either original signed wet seal, embossed seal, or digital seal, according to the requirements of Chapters 471 and 481 of the Florida Statutes.

107.3.4.1 *Deferred submittals.* For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the deferred submittal documents have been approved by the building official.

107.3.4.2 Certifications by contractors authorized under the provisions of Section 489.115(4)(b) F.S., shall be considered equivalent to sealed plans and specifications by a person licensed under Chapter 471, F.S., or Chapter 481 F.S., by local enforcement agencies for plans review for permitting purposes relating to compliance with the wind-resistance provisions of the code or alternate methodologies approved by the Florida Building Commission for one and two-family dwellings. The town may rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, the town may accept or reject plans sealed by persons licensed under Chapters 471, 481 or 489, Florida Statutes.

107.3.5 *Minimum plan review criteria for buildings.* The examination of the documents by the building official shall include the following minimum criteria and documents: a floor plan; site plan; foundation plan; floor/roof framing plan or truss layout; all fenestration and building envelope penetrations; flashing; and rough opening dimensions; and all exterior elevations:

107.3.5.1 *Commercial Buildings:*

107.3.5.1.1 *Building*

1. Site requirements:

Parking

Fire access

Vehicle loading

Driving/turning radius

Fire hydrant/water supply/post indicator valve (PIV)

Set back/separation (assumed property lines)

Location of specific tanks, water lines and sewer lines

Flood hazard areas, flood zones, and design flood elevations.

2. Occupancy group and special occupancy requirements shall be determined (with cross check with the energy code submittal).

3. Minimum type of construction shall be determined (see Table 503).

4. Fire-resistant construction requirements shall include the following components:

Fire-resistant separations

Fire-resistant protection for type of construction

Protection of openings and penetrations of rated walls

Fire blocking and draft-stopping and calculated fire resistance

5. Fire suppression systems shall include:

Early warning smoke evacuation systems

Schematic fire sprinklers

Standpipes

Pre-engineered systems

Riser diagram

6. Life safety systems shall be determined and shall include the following requirements:

Occupant load and egress capacities

Early warning

Smoke control

Stair pressurization

Systems schematic

Safeguards during construction, as applicable

7. Occupancy load/egress requirements shall include:

Occupancy load

Gross

Net

Means of egress

Exit access

Exit

Exit discharge

Stairs construction/geometry and protection

Doors

Emergency lighting and exit signs

Specific occupancy requirements

Construction requirements

Horizontal exits/exit passageways

8. Structural requirements shall include:

Soil conditions/analysis

Termite protection

Design loads

Wind requirements

Building envelope (including Section 107.2.4 of this code)

Structural calculations (if requested)

Foundation

Flood requirements in accordance with Section 1612 of this code, including lowest floor elevations, enclosures, flood damage-resistant materials

Wall systems

Floor systems

Roof systems

Threshold inspection plan

Stair systems

9. Materials shall be reviewed and shall at a minimum include the following:

Wood

Steel

Aluminum

Concrete

Plastic

Glass

Masonry

Gypsum board and plaster

Insulating (mechanical)

Roofing

Deck coatings

Insulation

Building envelope portions of the Energy Code (including calculation and mandatory requirements)

10. Accessibility requirements shall include the following:

Site requirements

Accessible route

Vertical accessibility

Toilet and bathing facilities

Drinking fountains

Equipment

Special occupancy requirements

Fair housing requirements

11. Interior requirements shall include the following:

Interior finishes (flame spread/smoke development)

Light and ventilation (including corresponding portion of the energy code)

Sanitation

12. Special systems:

Elevators

Escalators

Lifts

13. Energy Code submittal

14. Swimming Pools:

Barrier Requirements

Spas

Wading pools

15. Location and installation details. The specific location and installation details of each fire door, fire damper, ceiling damper and smoke damper shall be shown and properly identified on the building plans by the designer

107.3.5.1.2 *Electrical*

1. Electrical:
 - Wiring
 - Services
 - Feeders and branch circuits
 - Overcurrent protection
 - Grounding
 - Wiring methods and materials
 - GFCIs
 - Electrical portions of the Energy Code (including calculation and mandatory requirements)
2. Equipment.
3. Special occupancies.
4. Emergency systems.
5. Communication systems.
6. Low voltage.
7. Load calculations.
8. Design flood elevation.

107.3.5.1.3 *Plumbing*

1. Minimum plumbing facilities.
2. Fixture requirements.
3. Water supply piping.
4. Sanitary drainage.
5. Water heaters.
6. Vents.
7. Roof drainage.
8. Back flow prevention.
9. Irrigation.
10. Location of water supply line.
11. Grease traps.
12. Environmental requirements.

13. Plumbing riser.
14. Design flood elevation.
15. Water/plumbing portions of the Energy Code (including calculation and mandatory requirements)

107.3.5.1.4 Mechanical

1. Mechanical portions of the Energy Calculations
2. Exhaust systems:
 - Clothes dryer exhaust
 - Kitchen equipment exhaust
 - Specialty exhaust systems
3. Equipment.
4. Equipment location.
5. Make-up air.
6. Roof-mounted equipment.
7. Duct systems.
8. Ventilation.
9. Combustion air.
10. Chimneys, fireplaces and vents.
11. Appliances.
12. Boilers.
13. Refrigeration.
14. Bathroom ventilation.
15. Laboratory.
16. Design flood elevation.

17. Smoke and/or Fire Dampers

107.3.5.1.5 Gas

1. Gas piping.
2. Venting.
3. Combustion air.
4. Chimneys and vents.
5. Appliances.
6. Type of gas.
7. Fireplaces.
8. LP tank location.
9. Riser diagram/shutoffs.
10. Design flood elevation.

11. Gas portions of the Energy Code (including calculation and mandatory requirements)

107.3.5.2 *Demolition*

1. Asbestos removal.

107.3.5.3 *Residential (One and Two-Family)*

1. Site requirements.

Set back/separation (assumed property lines)

Location of septic tanks

2. Fire-resistant construction (if required).

3. Fire protection systems, when required

4. Smoke detector locations.

5. Egress.

Egress window size and location stairs construction requirements

6. Structural requirements shall include:

Wall section from foundation through roof, including assembly and materials, connector tables, wind requirements.

Termite protection

Design Loads

Wind requirements

Building envelope (including Section 107.2.4 of this code)

Structural calculations (if requested)

Foundation

Wall systems

Floor systems

Roof systems

7. Accessibility requirements: show/identify accessible bath.

8. Impact resistant coverings or systems.

9. Required Florida Product Approvals.

10. Flood hazard areas, flood zones, design flood elevations, lowest floor elevations, enclosures, equipment, and flood damage-resistant materials.

11. Residential Energy Code submittal (including calculation and mandatory requirements)

12. Electrical:

Electric service riser with wire sizes, conduit detail and grounding detail.
Complete load calculations, Panel schedules

13. Mechanical:
Equipment and location, Duct systems
14. Plumbing:
Plumbing riser
15. Gas:
Gas piping
Venting
Combustion air
Chimneys and vents
Appliances
Type of gas
Fireplaces
LP tank location
Riser diagram/shutoffs

107.3.5.4 *Swimming Pools*

1. Barrier requirements.
2. Spas.
3. Wading pools.

107.3.5.5 *Manufactured buildings/housing.*

1. Site requirements
Setback/separation (assumed property lines)
Location of septic tanks (if applicable)
2. Structural
Wind zone
Anchoring
Blocking
3. Plumbing
List potable water source and meter size (if applicable)
4. Mechanical
Exhaust systems
Clothes dryer exhaust
Kitchen equipment exhaust
5. Electrical exterior disconnect location

107.3.5.6 *Exemptions.* Plans examination by the building official shall not be required for the following work:

1. Replacing existing equipment such as mechanical units, water heaters, etc.;
2. Reroofs (as determined by the building official);
3. Minor electrical, plumbing and mechanical repairs;
4. Annual maintenance permits;
5. Prototype plans:
Except for local site adaption, siding, foundations and/or modifications.
Except for structures that require waiver; and
6. Manufactured buildings plan except for foundations and modifications of buildings on site and as listed above in manufactured buildings/housing.

107.4 *Amended construction documents.* Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for review as an amended set of construction documents.

107.5 *Retention of construction documents.* One set of approved construction documents shall be retained by the building official as required by Florida Statutes.

107.6 *Affidavits.* The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Chapter 468, F.S., Part XII and that any person conducting inspections is qualified as a building inspector under Chapter 468, F.S. Part XII (See also Section 105.14 of this code).

107.6.1 *Building permits issued on the basis of an affidavit in special flood hazard areas..* Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

107.7 If the local building code administrator, plans examiner or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant.

If the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or a person contracted by the local enforcing agency to review the plans and that employee or person identifies specific plan features that do not comply with the applicable codes, the building code administrator, plans examiner, or inspector must provide this

information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

Section 108. *Temporary Structures and Uses.*

- 108.1 *General.* The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 6 months. The building official is authorized to grant extensions for demonstrated cause.
- 108.2 *Conformance.* Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure public health, safety and general welfare (Refer to Section 3103 FBC-Building).
- 108.3 *Temporary power.* The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in NFPA 70 (National Electrical Code [NEC]).
- 108.4 *Termination of approval.* The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

Section 109. *Fees.*

- 109.1 *Payment of Fees.* A permit application shall not be valid until the fees prescribed by the town has been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.
- 109.2 *Schedule of permit fees.* On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, as set forth on the Town's fee schedule adopted by resolution of the Town Commission.

109.2.1 Types of Fees Enumerated. Fees may be charged for but not limited to the following:

1. Permits;
2. Plans examination;
3. Certificates of competency (including fees for applications, examinations, renewal, late renewal, and reciprocity);
4. Re-inspections;
5. Administrative fees (including fees for investigative and legal costs incurred in the context of certain disciplinary cases heard by the board);
6. Variance requests;
7. Administrative appeals;
8. Violations; and
9. Other fees as established by local resolution or ordinance.

- 109.3 *Building permit valuations.* If, in the opinion of the building official, the claimed valuation of building, alteration, structure, electrical, gas, mechanical or plumbing systems appears to be underestimated on the application, the permit shall be denied, unless the applicant can show detailed, quantity estimates, and/or bona fide signed contracts (excluding land value) to meet

the approval of the building official. For permitting purposes, valuation of buildings and systems shall be total replacement value to include structural, electric, plumbing, mechanical, interior finish, relative site work, architectural and design fees, marketing costs, overhead and profit; excluding only land value. Valuation references may include the latest published data of national construction cost analysis services (Marshall-Swift, Means, etc.). Final building permit valuation shall be set by the building official.

- 109.4 *Work commencing before permit issuance.* Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the building official's approval or the necessary permits shall be subject to a penalty fee in addition to the required permit fees, as set in approved fee schedule set forth on the Town's fee schedule adopted by resolution of the Town Commission. This provision shall not apply to emergency work when delay would clearly have placed life or property in imminent danger. But in all such cases, there should be immediate notification to the Building Official and the required permit(s) must be applied for within three business (3) business days and any unreasonable delay in obtaining those permit(s) shall result in the charge of a penalty fee. The payment of a penalty fee shall not preclude or be deemed a substitute for prosecution for commencing work without first obtaining a permit. The Building Official may grant extensions of time or adjust penalties when justification cause has been demonstrated in writing.
- 109.5 *Related fees.* The payment of the fee for the construction, alteration, removal or demolition for work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.
- 109.6 *Refunds.* The building official is authorized to establish a refund policy.

Section 110. *Inspections.*

- 110.1 *General.* Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other federal, state, or ordinances of the Town, code, or regulation. Inspections presuming to give authority to violate or cancel the provisions of this code or of other federal, state, or ordinances of the Town, code, or regulation shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. The Building Official shall be permitted to require a boundary line survey prepared by a qualified surveyor whenever the boundary lines cannot be readily determined in the field. Neither the building official nor the Town shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

- 110.1.1 *Manufacturers and fabricators.* When deemed necessary by the building official, he/she shall make, or cause to be made, an inspection of materials or assemblies at the point of manufacture or fabrication. A record shall be made of every such examination and inspection and of all violations of the technical codes.

- 110.1.2 *Other inspections services.* The Building Official may make, or cause to be made by others, the inspections required by Section 110 of this code. He/she may accept reports of inspectors of recognized inspection services, provided that after investigation he/she is satisfied as to their qualifications and reliability. A certificate called for by any provision of the technical codes shall not be based on such reports unless the same are certified by the building code inspector or the architect or engineer performing building code inspections in writing and certified by a responsible officer of such service in a manner specified by the building official. The building official shall ensure that all persons making such inspections shall be certified in accordance to Chapter 468 Florida Statutes.-

The Building Official may require the owner to employ an inspection service in the following instances:

1. For buildings or additions of Type I construction;
2. For all major structural alterations;
3. Where the concrete design is based on compressive strength (f 'c) in excess of 3000 pounds per square inch;
4. For pile driving;
5. For buildings with area greater than 20,000 square foot;
6. For buildings more than 2 stories in height; or
7. For buildings and structures of unusual design or methods of construction.

Such inspectors shall be adequately present at times work is underway on the structural elements of the building. Such inspectors shall be a registered architect, or engineer. An employee of the architect or engineer licensed under Chapter 468, Part XII, Florida Statutes may perform the inspections, under the direction of and with final certification from the architect or engineer. Such inspectors shall submit weekly progress reports including the daily inspections to the building official, and including a code compliance opinion of the Resident Inspector.

At the completion of the construction work or project, such inspectors shall submit a certificate of compliance to the building official, stating that the work was done in compliance with this code and in accordance with the permitted drawing. Final inspection shall be made by the building official before a Certificate of Occupancy or Certificate of Completion is issued; and confirmation inspections may be made at any time to monitor activities and resident inspectors.

110.1.3 *Affidavit for inspection.* With specific prior approval of, and in a format acceptable to the building official, an affidavit for certification of inspection may be accepted from the permit qualifier; when accompanied by extensive photographic evidence of sufficient detail to demonstrate code compliance. The photographic evidence shall be comprehensive in the display of the installation and/or construction and job location identifiers. The affidavit and accompanying photographs shall be provided to the inspector onsite, at the next scheduled inspection. If the photographs:

1. are found to be insufficient by the building official to demonstrate compliance with this code and/or the permitted document, or clearly display location identifiers, or are missing, the inspector shall require the contractor to obtain the services of a Registered Florida Professional Engineer to inspect and certify the installation and/or construction.

110.1.3.1 Exception; Affidavits for inspection may not be utilized for inspection of specific construction requirements contained in 44CFR Sections 59 and 60 and a local Floodplain Management Ordinance for construction located in Special Flood Hazard areas.

110.2 *Preliminary inspection.* Subject to the limitations of Chapter 553.79(20), F.S., before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

110.2.1 *Existing building inspections.* Before issuing a permit, the building official may examine or cause to be examined any building, electrical, gas, mechanical, or plumbing systems for which an application has been received for a permit to enlarge, alter, repair, move, demolish, install, or change the occupancy. He/she may inspect the buildings, structures, electrical, gas, mechanical and plumbing systems, from time to time, before, during and upon completion of the work for which a permit was issued. He/she shall make a record of every such examination and inspection and of all observed violations of the technical codes. Additional regulations in the Florida Building Code, Existing Building may apply.

110.3 *Required inspections.* The building official upon notification from the permit holder or his or her agent, shall make the following inspections, and or any other such inspections as deemed necessary, and shall either release that portion of the construction or shall notify the permit holder or his or her agent of any violations which must be corrected in order to comply with the technical codes. The building official shall determine the timing and sequencing of when inspections occur and what elements are inspected at each inspection. A complete survey or special purpose survey may be required before an inspection is approved.

A. Building

1. Foundation inspection. To be made after trenches are excavated and forms erected and required reinforcing steel is in place and, shall at a minimum include the following building components:

- Stem-wall
- Monolithic slab-on-grade
- Pilings and pile caps
- Footers/grade beams

1.1. Slab/Floor Inspection: Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel or framing members installed and all building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

1.2 A foundation/~~F~~orm board survey prepared and certified by a registered surveyor may be required, prior to approval of the slab inspection. The survey shall certify placement of the building on the site, illustrate all surrounding setback dimensions and shall be available at the job site for review by the building inspector. In lieu of providing a survey, the contractor may elect to uncover all property line markers and string-up all property lines in preparation for inspection.

1.23. In flood hazard areas, upon placement of the lowest floor, including basement, and prior to further vertical construction, the elevation certification, required in Section 1612.5, shall be submitted to the building official.

2. Shell Inspections:

2.1. Lintel/tie beams/columns/masonry units. To be made after masonry units, forms, reinforcing steel, shoring, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed.

2.2. Sheathing inspection. To be made either as part of a dry-in inspection or done separately at the request of the contractor after all roof and wall sheathing and fasteners are complete and shall at a minimum include the following building components:

- Roof sheathing
- Wall sheathing
- Continuous air barrier
- Exterior siding/cladding
- Floor sheathing
- Sheathing fasteners
- Roof/wall dry-in.

- Gypsum board, as required
- ~~Sheathing/cladding inspection~~

NOTE: Sheathing fasteners installed and found to be missing the structural member (shiners) shall be corrected prior to installation of the dry-in material.

3. Roofing inspection. Shall at a minimum be made in at least two inspections and include the following building components:

- Dry-in
- Insulation
- Roof coverings (including In Progress as necessary)
- Insulation on roof deck (according to submitted energy calculation)
- Flashing

3.1 Re-Roof sheathing inspection. An affidavit with a notarized signature of a state or locally licensed roofing contractor for the installation of additional sheathing fasteners as required by the Existing Building Code may be accepted at the discretion of the building official.

4. Framing inspection. To be made after the roof deck or sheathing, all framing, fire blocking and bracing is in place, all concealed wiring, all pipes, chimneys, ducts and vents are complete and shall at a minimum include the following building components:

- Window/door framing and installation.
- Verify rough opening dimensions are within tolerances.
- Window/door buck attachments
- Window U-factor/SHGC as indicated on approved calculations
- Vertical cells/columns complete, if applicable
- Lintel/tie beams complete, if applicable.
- Framing/trusses/bracing/connectors (including truss layout and engineered drawings)
- Draft stopping/fire blocking
- Curtain wall/ bearing wall framing
- Fire resistant assemblies, joints and penetrations, as required
- Accessibility.

5. Insulation Inspection. To be made after the framing inspection is approved and the insulation is in place, according to approved energy calculation submittal. Includes wall and ceiling insulation, thermal and ignition barriers.

6. Lath/Drywall Inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire-resistance- rated assembly or a shear assembly, unless otherwise determined by the building official.

7. Final inspection. To be made after the building is completed, all sub-trade inspections have passed, and ready for occupancy.

- 7.1. Lowest floor elevation. In flood hazard areas, as part of the final inspection, a final certification of the lowest floor elevation shall be submitted to the authority having jurisdiction.

7.2 A final survey shall be provided to certify placement of the building on the site, illustrate all surrounding setback dimensions, easements, slopes for proper drainage and shall be available at the job site or submitted electronically for review by the building official.

B. Swimming pool inspection.

- First inspection to be made after excavation and installation of reinforcing steel, bonding and main drain, and prior to placing of concrete shell.
- Steel reinforcement inspection
- Underground electric inspection
- Underground piping inspection including a pressure test
- Underground electric inspection under deck area (including the equipotential bonding)
- Underground piping inspection under deck area.
- Deck inspection: to be made prior to installation of the deck material (with forms, deck drains, and any reinforcement in place).
- Final electric inspection to be made prior to filling the swimming pool with water.
- Final permanent barrier inspection is to be made prior to filling the swimming pool with water.
- In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet the requirements relating to pool safety features as described in Section 424.2.17.
- Final inspection to be made when the swimming pool is complete and all required enclosure requirements are in place.

C. Demolition inspections.

- First inspection (pre-demolition) to be made after all utility connections have been disconnected and secured in such manner that no unsafe or unsanitary conditions shall exist during or after demolition operations
- Final inspection (post-demolition) to be made after all demolition work is completed.
 - Exterior Site Conditions shall be graded and sodded to prevent the accumulation of water and shall be sloped in a manner not create a nuisance to the adjacent properties.

D. Manufactured building inspections.

- The building department shall inspect construction of foundations; connecting buildings to foundations; installation of parts identified on plans as site installed items, joining the modules, including utility crossovers; utility connections from the building to utility lines on site; and any other work done on site which requires compliance with the Florida Building Code (See also Section 107.3.5

Manufactured/Modular Buildings of this code). Additional inspections may be required for public educational facilities (See Section 453.27.20 FBC-Building).

E. Impact-Resistant Coverings or Impact-Resistant Systems Inspections

Where impact-resistant coverings or impact-resistant systems are installed to meet requirements of this code, the building official shall schedule adequate inspections of impact-resistant coverings or impact-resistant systems to determine the following:

- The system indicated on the plans was installed.
- The system is installed in accordance with the manufacturer's installation instructions and the product approval.

F. *Electrical*

1. Underground inspection (including bonding and ground). To be made after trenches or ditches are excavated, conduit or cable is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the building is dried-in, framing, fire-blocking and bracing is in place, and prior to the installation of insulation (if applicable), or wall or ceiling membranes.
3. Low Voltage: To be made for security, alarm, elevator, and special uses
4. Power release inspection. To be made after the building electrical system is substantially complete, or completed in phases, with all circuitry installed and electrical fixtures and devices in place, or properly tagged and safed-off.
5. Final inspection. To be made after the building is complete, all required electrical fixtures are in place and properly connected or protected, and the structure is ready for occupancy.
6. Existing Swimming Pools. To be made after all repairs or alterations are complete, all required electrical equipment, GFCI protection, and equipotential bonding are in place on said alterations or repairs.

G. *Plumbing*

1. Underground inspection. To be made after trenches or ditches are excavated, piping is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the roof, framing, fire-blocking and bracing is in place and all soil, waste and vent piping is complete, and prior to the installation of insulation (if applicable), or wall or ceiling membranes.
3. Final inspection. To be made after the building is complete, all plumbing fixtures are in place and properly connected, and the structure is ready for occupancy.

Note: See Section 312 of the Florida Building Code, Plumbing for required tests.

H. *Mechanical*

1. Underground inspection. To be made after trenches or ditches are excavated, underground duct and fuel piping is installed, and before any backfill is put in place.
2. Rough-in inspection. To be made after the building is dried-in, framing, fire blocking and bracing are in place and all ducting, and other concealed components are complete, and prior to the installation of insulation (if applicable), or wall or ceiling membranes.

Includes mechanical provisions of the energy code and approved calculation provisions.

3. Final inspection. To be made after the building is complete, the mechanical system is in place and properly connected, and the structure is ready for occupancy.

I. Gas

1. Rough piping and tank inspection. To be made after all new piping authorized by the permit has been installed, and before any such piping has been covered or concealed or any fixtures or gas appliances have been connected.
2. Final piping inspection. To be made after all piping authorized by the permit has been installed and after all portions which are to be concealed by plastering or otherwise have been so concealed, and before any fixtures or gas appliances have been connected. This inspection shall include a pressure test.
3. Final inspection. To be made on all new gas work authorized by the permit and such portions of existing systems as may be affected by new work or any changes, to ensure compliance with all the requirements of this code and to assure that the installation and construction of the gas system is in accordance with reviewed plans.

J. Site Debris

1. The contractor and/or owner of any active or inactive construction project shall be responsible for the clean-up and removal of all construction debris or any other miscellaneous discarded articles prior to receiving final inspection approval. Construction job sites must be kept clean and in a safe condition at all times. (See also Section 110.9 of this code)
2. All debris shall be kept in such a manner as to prevent it from being spread by any means.

110.3.1 *Footing and foundation inspection.* Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job. (See also Section 110.3 of this code)

110.3.2 *Concrete slab and under-floor inspection.* (Reserved). (See Section 110.3, (A) Building (1) (1.1) of this code).

110.3.3 *Lowest Floor Elevation.* (Reserved). (See Section 110.3, (A) Building (1) (1.2) of this code).

110.3.4 *Frame Inspection.* (Reserved). (See Section 110.3, (A) Building (4) of this code).

110.3.5 *Lath and Gypsum Board Inspection.* (Reserved). (See Section 110.3, (A) Building (6) of this code).

110.3.6 *Weather-exposed balcony and walking surface waterproofing.* Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious-moisture-barrier system shall not be concealed until inspected and approved.

110.3.7 *Fire- and smoke-resistant penetrations.* Protection of joints and penetrations in fire-resistance-rated assemblies, smoke barriers and smoke partitions shall not be concealed from view until inspected and approved by the Building Official.

110.3.8 *Energy efficiency inspections.* Inspections shall be made to determine compliance with FBC, Energy Conservation and confirm with the approved energy code submittal (by appropriate trade) and corresponding mandatory requirements and shall include, but not be limited to, inspections for: corresponding envelope insulation R- and U-values, fenestration U-value and Solar Heat Gain Coefficient, duct system R-value, and HVAC, lighting, electrical and water-heating equipment efficiency.

110.3.9 Other inspections. In addition to the inspections specified in Sections 110.3 through 110.3.7 of this code, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the Building Division.

110.3.10 Special Inspections. Resered.

110.3.11 *Final Inspections prior to issuance of Certificate of Occupancy or Completion.* The building official shall inspect or cause to be inspected, at various intervals, all construction or work for which a permit is required, and a final inspection shall be made of every building, structure, electrical, gas, mechanical or plumbing system upon completion, prior to the issuance of the Certificate of Occupancy or Certificate of Completion. In performing inspections, the building official shall give first priority to inspections of the construction, addition, or renovation to, any facilities owned or controlled by a state university, state community college or public school district.

110.3.11.1 Flood hazard documentation for properties located in a flood hazard area, all required documentation shall be submitted to the building official at the time of the final inspection.

110.3.11.2 Energy Code documentation. As required by Section C408.2.4.1 of the Energy Conservation Volume, confirmation that the preliminary commissioning report has been received by building owner shall be provided at the time of final mechanical inspection.

110.3.12 *Termites.* Building components and building surroundings required to be protected from termite damage in accordance with Section 1503.7 of this code, Section 2304.12.9 of this code or Section 2304.12.4 of this code, specifically required to be inspected for termites in accordance with Section 2114 of this code, or required to have chemical soil treatment in accordance with Section 1816 of this code shall not be covered or concealed until the release from the building official has been received. (Also refer to Sections 105.10 and 105.11 of this code)

110.3.13 *Impact Resistant coverings or systems.* Where impact resistant coverings or systems are installed to meet requirements of this code, the Building Official shall schedule adequate inspections of impact resistant coverings or systems to determine the following:

1. The system indicated on the plans was installed.
2. The system is installed in accordance with the manufacturer's installation instructions and the product approval.

110.3.14 *Reinforcing steel and structural frames.* Reinforcing steel or structural frame work of any part of any building or structure shall not be covered or concealed without first obtaining a release from the building official. Certification that field welding and structural bolted connections meet design requirements shall be submitted to the building official, upon request.

110.4 *Inspection agencies.* The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

110.5 *Inspection requests.* It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

110.6 *Approval required.* Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building inspector. The building official,

upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

110.7 *Shoring.* For threshold buildings, shoring and associated formwork or falsework shall be designed and inspected by a Florida registered professional engineer, employed by the permit holder or subcontractor, prior to any required mandatory inspections by the threshold building inspector.

110.8 *Threshold building.*

110.8.1 The enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to the enforcing agency prior to the issuance of a building permit for the construction of a threshold building. The purpose of the structural inspection plans is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector.

110.8.2 The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification or number-of-stories criteria which would result in classification as a threshold building under Florida Statute 553.71(7), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

110.8.3 The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed or registered under Chapter 471, Florida Statutes, as an engineer or under Chapter 481, Florida Statutes, as an architect.

110.8.4 Each enforcement agency shall require that, on every threshold building:

110.8.4.1 The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcement agency in substantially the following form: "To the best of my knowledge and belief, the above described construction of all structural load-bearing components complies with the permitted documents, and the shoring and reshoring conforms to the shoring and reshoring plans submitted to the enforcement agency."

110.8.4.2 Any proposal to install an alternate structural product or system to which building codes apply shall be submitted to the enforcement agency for review for compliance with the codes and made part of the enforcement agency's recorded set of permit documents.

110.8.4.3 All shoring and reshoring procedures, plans and details shall be submitted to the enforcement agency for recordkeeping. Each shoring and reshoring installation shall be supervised, inspected and certified to be in compliance with the shoring documents by the contractor.

110.8.4.4 All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable

minimum building codes and the applicable fire- safety standards as determined by the local authority in accordance with this section and Chapter 633, Florida Statutes.

110.8.5 No enforcing agency may issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in Section 489.105(3)(a), Florida Statutes, or to a licensed building contractor, as defined in Section 489.105(3)(b), Florida Statutes, within the scope of her or his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management and control of the construction activities on the project for which the building permit was issued.

110.8.6 The building division may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, Florida Statutes, without duplicative inspection by the Building Division. The Building Official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes, or certified as a special inspector under Chapter 471 or 481, Florida Statutes. Inspections of threshold buildings required by Section 553.79(5), Florida Statutes, are in addition to the minimum inspections required by Section 110.3 this code.

110.9 *Impact of construction.* All construction activity regulated by this code shall be performed in a manner so as not to adversely impact the condition of adjacent property, unless such activity is permitted to affect said property pursuant to a consent granted by the applicable property owner, under terms or conditions agreeable to the applicable property owner. This includes, but is not limited to, the control of dust, noise, water or drainage run-offs, debris, and the storage of construction materials. New construction activity shall not adversely impact legal historic surface water drainage flows serving adjacent properties, and may require special drainage design complying with engineering standards to preserve the positive drainage patterns of the affected sites. Accordingly, developers, contractors and owners of all new residential development, including additions, pools, patios, driveways, decks or similar items, on existing properties resulting in a significant decrease of permeable land area on any parcel or has altered the drainage flow on the developed property shall, as a permit condition, provide a professionally prepared drainage plan clearly indicating compliance with this paragraph. Upon completion of the improvement, a certification from a licensed professional shall be submitted to the inspector in order to receive approval of the final inspection.

110.10 Special Building Inspector.

110.10.1 The Building Official may require the owner to employ a special inspector for the inspection of the structural framework, or any part thereof, as herein required:

110.10.1.1 Buildings or structures or part thereof of unusual size, height, design or method of construction and critical structural connections.

1. Placement of Piling.
2. Windows, glass doors, external protection devices and curtain walls on buildings over two (2) stories.
3. The method or pace of construction requires continuous inspection.
4. In the opinion of the Building Official, any other additional inspections that are required.

110.10.2 The Building Official shall require the owner to employ a special building inspector for the inspections herein required:

110.10.2.1 Precast Concrete Units.

110.10.2.2 Reinforced unit masonry.

110.10.2.3 Connections.

110.10.2.4 Metal Building Systems.

110.10.2.5 Smoke Control Systems.

110.10.3 The person employed by the owner as a Special Building Inspector shall be subject to verification of qualifications by the Building Official or Building Official's designee, as applicable.

110.10.4 The Building Official or Building Official's designee, as applicable shall require that the Architect or Engineer of record submit an inspection plan which shall specify the scope and nature of inspections to be performed. The special building inspector or their authorized representative shall make all inspections in accordance with the approved inspection plan.

110.10.5 Special building inspector shall be an Architect or Engineer or their duly authorized representative.

Exception 1: Building Inspectors (structural) certified by BORA who have satisfactorily an approved masonry course may perform inspections of Reinforced Unit Masonry and any precast lintels incorporated into such masonry for Residential Occupancy and Group R-3 Occupancy.

Exception 2: Special building inspector for Smoke control systems shall meet the qualifications required in FBC 909.18.8.2.

110.10.6 The special building inspector shall be responsible for compliance with the applicable portions of the permitted construction documents as delineated in the special building inspection plan and shall submit progress reports and inspection reports to the Building Official's designee as applicable, for submittal to the Building Official. Structural inspections performed by the special building inspector shall satisfy the requirements for mandatory inspections by the FBC.

110.10.6.1 A log of all progress reports and inspection reports shall be maintained at the job site.

110.10.6.2 Signed and Sealed progress reports and inspection reports shall be submitted to the Building Official's designee, as applicable; for submittal to the Building Official on a weekly basis.

Exception: The Building Official shall determine the frequency for the submitting of progress reports for Smoke Control Systems.

110.10.6.3 The municipality shall monitor the progress of the special building inspector on a regular basis.

110.10.7 At the completion of the work, the special building inspector shall submit a signed and sealed Certificate of Compliance to the Building Official's designee, as applicable for submittal to the Building Official, stating that the work was done, substantially in accordance with the applicable portions of the permitted construction documents as delineated in the special building inspection plan.

Exception: Reports for Smoke Control Systems shall comply with FBC 909.18.8.3 Reports, and FBC 909.18.8.3.1 Report filing.

110.11 Clean-up of Construction Site. Upon completion of the proposed work, the permit holder shall leave the construction site cleared of rubbish, debris, construction sheds or materials of construction. In the event there has been damage to public property or that rubbish, debris, construction sheds or materials of construction have been left at the construction site, then the Building Official shall refuse to make final inspection and shall notify the permit holder to correct the condition of violation with five (5) days. For failure to comply with such notice after such period of five (5) days, the permit holder is subject to the penalties specified herein, and the Building Official shall have the clean-up work done and public property restored and shall notify the legal authority, who shall institute the necessary action to have the costs placed as a lien against the property in relation to which the permit was issued.

110.12 Mandatory structural inspections for condominium and cooperative buildings.

110.12.1 General. The Legislature finds that maintaining the structural integrity of a building throughout the life of the building is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

110.12.2. As used in this section, the terms:

(a) "Milestone inspection" means a structural inspection of a building, including an inspection of load-bearing elements and the primary structural members and primary structural systems as those terms are defined in s. 627.706, Florida Statutes, by an architect licensed under chapter 481 or engineer licensed under chapter 471 authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code. The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.

(b) "Substantial structural deterioration" means substantial structural distress or substantial structural weakness that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

110.12.3. (a) An owner or owners of a building that is three stories or more in height as determined by the Florida Building Code and that is subject, in whole or in part, to the condominium or cooperative form of ownership as a residential condominium under chapter 718, Florida Statutes, or a residential cooperative under chapter 719, Florida Statutes, must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If a building reached 30 years of age before July 1, 2022, the building's initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025. If the date of issuance for

the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

- (b) The local enforcement agency may determine that local circumstances, including environmental conditions such as proximity to salt water as defined in s. 379.101, require that a milestone inspection must be performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.
 - (c) The local enforcement agency may extend the date by which a building's initial milestone inspection must be completed upon a showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an architect or engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstance to justify an extension.
 - (d) The local enforcement agency may accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially comply with the requirements of this section. Notwithstanding when such inspection was completed, the condominium or cooperative association must comply with the unit owner notice requirements in Section 110.9.9. The inspection for which an inspection report is accepted by the local enforcement agency under this paragraph is deemed a milestone inspection for the applicable requirements in chapters 718 and 719. If a previous inspection and report is accepted by the local enforcement agency under this paragraph, the deadline for the building's subsequent 10-year milestone inspection is based on the date of the accepted previous inspection.
- 110.12.4. The milestone inspection report must be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association. This section does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.
- 110.12.5. Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership, as applicable, by certified mail, return receipt requested. The condominium or cooperative association must notify the unit owners of the required milestone inspection within 14 days after receipt of the written notice from the local enforcement agency and provide the date that the milestone inspection must be completed. Such notice may be given by electronic submission to unit owners who consent to receive notice by electronic submission or by posting on the association's website.
- 110.12.6. Phase one of the milestone inspection must be completed within 180 days after the owner or owners of the building receive the written notice under Section 110.9.5. For purposes of this section, completion of phase one of the milestone inspection means the licensed engineer or architect who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

110.12.7. A milestone inspection consists of two phases:

110.12.7.1. For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in Section 110.9.7.2, is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.12.7.2. A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. If a phase two inspection is required, within 180 days after submitting a phase one inspection report the architect or engineer performing the phase two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.12.8. Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, to any other owner of any portion of the building which is not subject to the condominium or cooperative form of ownership, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

- (a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.
- (b) Indicate the manner and type of inspection forming the basis for the inspection report.
- (c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.
- (d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.
- (e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.
- (f) Identify and describe any items requiring further inspection.

110.12.9. Within 45 days after receiving the applicable inspection report, the condominium or cooperative association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the

association's notice requirements under chapter 718 or chapter 719, as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to received notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector- prepared summary on the association's website, if the association is required to have a website.

110.12.10. A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

110.12.11. A board of county commissioners or municipal governing body may adopt an ordinance requiring that a condominium or cooperative association and any other owner that is subject to this section schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an owner of the building fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

Section 111. *Certificates of Occupancy and Completion.*

111.1 *Use and Occupancy.* No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a Certificate of Occupancy therefore as provided herein. Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Said certificate shall not be issued until all required electrical, gas, mechanical, plumbing and fire protection systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the building official.

Exception: Certificates of occupancy are not required for work exempt from permits under Section 105.2 of this code

111.2 *Certificate issued.* After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the building department or other agency whose approval is inherent in the building permitting process, the building official shall issue a Certificate of Occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. For buildings and structures in flood hazard areas, a statement that documentation of the as-built lowest floor elevation has been provided and is retained in the records of the building department.
7. The name of the building official.

8. The edition of the code under which the permit was issued.
 9. The use and occupancy, in accordance with the provisions of Chapter 3 of this code.
 10. The type of construction as defined in Chapter 6 of this code.
 11. The design occupant load.
 12. If an automatic sprinkler system is provided, whether the sprinkler system is required.
 13. Any special stipulations and conditions of the building permit.
- 111.3 *Temporary/partial occupancy.* A temporary/partial Certificate of Occupancy or Certificate of Completion may be issued for a portion or portions of a building that may safely be occupied prior to final completion of the building. The building official may require, once all life safety issues have been complied with, an applicant to provide adequate cash surety for unfinished work or revision of plans until a permanent Certificate of Occupancy or Certificate of Completion is granted. The purpose of the cash surety is to insure completion of work under this permit. Such cash surety shall be equal to one hundred ten percent (110%) of the estimated value of the remaining work, including labor and material, as determined by the design professional. The design professional shall submit a signed and sealed document attesting to the amount required to cover the cash surety. If work has not been completed and all finals requested within 90 days of issuance of the initial Temporary/Partial Certificate of Occupancy or Certificate of Completion, the jurisdiction retains the right to have the applicant surrender the cash surety. The jurisdiction then may use the surety to finish the remaining work. The surety shall be in the form of cash money, certified check, or cashier's check. Surety shall be returned upon approval of all final inspections and upon written request that has been approved by the building official. This provision is only for the Florida Building Code; all other Agency approvals necessary for construction must be secured prior to this provision being applied.
- 111.4 *Revocation.* The building official is authorized to, in writing, suspend or revoke a Certificate of Occupancy or Completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.
- 111.5 *Certificate of Completion.* Upon satisfactory completion of a building, structure, electrical, gas, mechanical or plumbing system, a Certificate of Completion may be issued. This certificate is proof that a structure or system is complete and for certain types of permits is released for use and may be connected to a utility system. This certificate does not grant authority to occupy or connect a building, such as a shell building, prior to the issuance of a Certificate of Occupancy.
- 111.6 *Fixturing and Stocking.* The Building Official is authorized to issue approval for fixturing, stocking, training, or decorating, when appropriate, to allow the builder to prepare the structure for permanent occupancy. The building may not open to the general public or be used for the transaction of any commerce. Such approval must be conditioned upon the approval of the Fire Marshal, when applicable.
- 111.7 *Digital Submittal Requirements for New Construction.*
- 111.7.1 *Building Footprints.* The Building Official is authorized to require the submittal of digital shape (CAD) files, in a specific format, depicting a geo-referenced footprint with elevation for all new structures as a condition of the issuance of a Certificate of Occupancy.
 - 111.7.2 *Subdivision Topography.* The Building Official is authorized to require the submittal of electronic topographical data for all new subdivisions over 5 acres or 5 lots for the purposes of updating and maintaining the community's flood maps.

Section 112. *Service Utilities.*

- 112.1 *Connection of service utilities.* No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required, until released by the building official and a Certificate of Occupancy or Completion is issued. The servicing utility company shall not connect the power supply until notified by the building official or his/her duly authorized designee.
- 112.2 *Temporary connection.* The building official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power for the purpose of testing building service systems or for use under a temporary Certificate of Occupancy.
- 112.2.1 *Energizing Systems.* It shall be unlawful for any person, firm or corporation to energize any wiring system or portion thereof until the electrical work has been inspected and approved and the responsible person, firm or corporation is authorized by the appropriate governmental jurisdiction to energize the system.
- 112.3 *Authority to disconnect service utilities.* The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 101.4 in case of emergency where necessary to eliminate an immediate hazard to life, or property, or unsafe condition, or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the serving utility, and whenever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or service system shall be notified in writing, as soon as practical thereafter.

Section 113. *Appeals and Variances.*

113.1 *Appeals*

- 113.1.1 *Decision of the building official.* The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the building official to the Florida Building Commission pursuant to Florida State Statute 553.775 whenever any one of the following conditions are claimed to exist:
1. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
 2. The provisions of this code do not apply to this specific case.
 3. That an equally good or more desirable form of installation can be employed in any specific case, which the building official has rejected or refused.
 4. The true intent and meaning of this code or any of the regulations hereunder have been misconstrued or incorrectly interpreted.
- 113.2 *Variances.* The Planning and Zoning Board, as established in the Town Code, when upon written request by an Applicant, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest. The board shall have no authority to waive requirements of this code. Review and recommendation by the Building Official to the Board is required. Application must also adhere to the Town Code criteria for Variance applications.
- 113.4.2.1 *Conditions of the variance.* In granting the variance, the Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the Board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

Section 114. *Violations.*

Any person, firm, corporation or agent who shall fail to comply with a provision of this code, or, or with any of the requirements thereof, or who shall erect, construct, alter, install, demolish or move any structure, electrical, gas, mechanical or plumbing system, or has erected, constructed, altered, repaired, moved or demolished a building, structure, electrical, gas, mechanical or plumbing system, without full compliance with applicable codes, laws, ordinances, rules and regulations, shall be guilty of a violation. Each such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of applicable codes, laws, ordinances, rules and regulations is committed or continued, and upon conviction of any such violation such person shall be punished within the limits and as provided by state laws. Nothing in this section shall prevent the Town from imposing fines, liens, or seek injunction relief, or exercising other enforcement powers as permitted by law. Code enforcement and penalties of Chapter 162 F.S. Part I shall be authorized if building work begins without payment of all required fees, and for the purposes of enforcing this code, code officials licensed under Chapter 468, F.S., Part XII are deemed "Code Inspectors", as defined in Section 162.04, F.S.

Section 115. *Stop Work Order.*

- 115.1 *Stop work orders.* Upon notice from the building official, work on any building, structure, electrical, gas, mechanical or plumbing system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner, shall immediately cease.
- 115.2 *Issuance.* The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. Where an emergency exists, the building official shall not be required to give a written notice prior to stopping the work.
- 115.3 *Unlawful continuance.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

Section 116. *Unsafe Structures and Equipment.*

- 116.1 *Unsafe buildings or systems.* All buildings, structures, electrical, gas, mechanical or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and shall be ordered by the building official to be abated by the owner, through repair and rehabilitation or by demolition in accordance with the this Code. The extent of repairs shall be determined by the building official.
- 116.1.1 When the building official determines a building, structure, electrical, gas, mechanical or plumbing system or portion thereof is unsafe, as set forth in this Code he/she shall provide the owner, agent or person in control of such building, structure, electrical, gas, mechanical or plumbing system a written notice of violation stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements, or to demolish and remove the building, structure, electrical, gas, mechanical or plumbing system or portion thereof. At the option of the Town, the processes and procedures for code enforcement under Chapter 162 F.S. may be utilized to abate a violation under this section. If this statutory method of enforcement is invoked, the building official shall act in the role of code inspector to initiate enforcement proceedings, and notice shall be in accordance with the provisions of the Statute.
- 116.1.2 If necessary, the notice shall also require the building, structure, electrical, gas, mechanical, plumbing systems or portion thereof to be vacated and/or disconnected, and not reoccupied and/or reconnected until the specified repairs and improvements are

completed, inspected and approved by the building official. The building official shall post at each entrance to the building a placard stating: THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL. This placard shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation or its officers, agents, or other servants, to remove the posting without written permission of the building official, or for any person to enter the building, or use the building or system(s) except for the purpose of making the required repairs or of demolishing same.

- 116.1.3 In case the owner, agent, or person in control cannot be found within the stated time limit, or, if such owner, agent, or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish, and remove said building, structure, electrical, gas, mechanical or plumbing system or portion thereof, the building official, acting as a code inspector, shall notify an enforcement board or special magistrate and request a hearing. In the case of the violation posing a serious threat, and after having ascertained the cost, the building official may take action to cause such building, structure, electrical, gas, mechanical or plumbing system or portion thereof, to be demolished, secured, repaired, or required to remain vacant or unused. Taking such action does not create a continuing obligation on the part of the building official or the Town to continue with maintaining such building, structure, or system; or create liability for any damage to the property.
- 116.1.4 The decision of the building official shall be final in cases of emergency, which, in the opinion of the building official, involve imminent danger to human life or health, or the property of others. He/she shall promptly cause such building, structure, electrical, gas, mechanical or plumbing system or portion thereof to be made safe or cause its removal. For this purpose he/she may at once enter such structure or land on which it stands, or abutting land or structures, with such assistance and at such cost as he may deem necessary. He/she may order the vacating of adjacent structures and may require the protection of the public by appropriate fence or such other means as may be necessary, and for this purpose may close a public or private way.
- 116.2 *Enforcement proceedings; hearings.* Violation proceedings and hearings for unsafe structures and equipment will be conducted before the code enforcement board or special magistrate in accordance with the provisions set forth in Chapter 162, F.S.. The owner of property that is subject to an enforcement proceeding before an enforcement board, special magistrate, or court is required to make disclosures as outlined in Chapter 162, F.S. before a transfer of property, and failure to make the required disclosures creates a presumption of fraud.
- 116.3 *Administrative fines; costs to repair; liens.* All costs associated with taking a case before the enforcement board or special magistrate shall be recovered where the Town prevails. Whenever one of the orders of the enforcement board or the special magistrate has not been complied with by the time set for compliance, for each day thereafter during which each violation continues past the date set for compliance, the enforcement board or the special magistrate may impose a fine. All costs incurred as a result of actions taken per Section 116.1.3 are charged to the violator. A certified copy of an order imposing a fine, or a fine plus repair, and the costs of prosecuting the case, may be recorded in the public records and shall thereafter constitute a lien against the land where the violation exists and upon any other real or personal property owned by the violator.
- 116.4 *Appeal.* An aggrieved party, including the Town, may appeal a final administrative order of an enforcement board or special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 117. *Variances In Flood Hazard Areas.*

117.1 *Flood hazard areas.* Pursuant to Section 553.73(5), Florida Statutes, the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.

Section 118. *Reserved.*

Section 119. *Severability.*

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

(Code 1978, § 7-18; Ord. No. 12-1991, § 2, 8-20-1991; Ord. No. 27-1993, § II, 12-15-1993; Ord. No. 3-1996, § II, 2-21-1996; Ord. No. 3-2005, § 3(7-18), 7-20-2005; Ord. No. 14-2007, § 3, 8-1-2007; Ord. No. 04-2012, § 1, 4-4-2012; Ord. No. 09-2015, § 1, 8-5-2015)

Sec. 54-8.1. - Establishment of wind speed lines.

As required by paragraph 1609.3 of the Florida Building Code, wind speed lines in the area of jurisdiction of the town are hereby established as set forth on the basic wind speed map, which is hereby adopted and incorporated as if fully set forth in this section, of which copies have been and are now filed in the office of the building official of the town. Pursuant to Figures 1609A, B and C of the Florida Building Code, design wind speeds are as follows:

Category I buildings: 160 mph

Category II buildings: 170 mph

Category III and IV buildings: 180 mph

(Ord. No. 04-2012, § 1, 4-4-2012; Ord. No. 09-2015, § 1, 8-5-2015)

Sec. 54-8.2. - National Electrical Code adopted.

The most current edition of the National Electrical Code, of which copies have been and are now filed in the office of the building official of the town, is hereby adopted and incorporated as if set forth at length in this section.

(Ord. No. 04-2012, § 1, 4-4-2012; Ord. No. 09-2015, § 1, 8-5-2015)

Secs. 54-9—54-30. - Reserved.

**LEGAL NOTICE OF PROPOSED ORDINANCE
TOWN OF LAKE PARK**

Please take notice that on Wednesday, May 1, 2024 at 6:30 p.m. or soon thereafter the Town Commission, of the Town of Lake Park, Florida to be held at 535 Park Avenue, Lake Park, Florida 33403 will consider the following Ordinances on second reading and proposed adoption thereof:

ORDINANCE 05 -2024

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE I, SECTION 54-8 OF THE TOWN CODE PERTAINING TO THE TOWN'S LOCAL AMENDMENTS TO CHAPTER ONE OF THE FLORIDA BUILDING CODE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT ; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

If a person decides to appeal any decision made by the Town Commission with respect to any hearing, they will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. For additional information, please contact Vivian Mendez, Town Clerk at 561-881-3311.

Vivian Mendez, MMC, Town Clerk
Town of Lake Park, Florida
PUB: April 21, 2024 - The Palm Beach Post



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Agenda Item No.

Agenda Title: Resolution Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Boat Storage, LLC for the Boat Storage Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina

[] SPECIAL PRESENTATION/REPORTS [] CONSENT AGENDA
 [] BOARD APPOINTMENT [] OLD BUSINESS
 [] PUBLIC HEARING ORDINANCE ON FIRST READING
 [x] NEW BUSINESS
 [] OTHER: _____

Approved by Town Manager Bambi McKibbon-Turner

Date:

Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
 ou=Assistant Town Manager/Human Resources Director,
 email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 09:48:05 -04'00'

Bambi McKibbon-Turner, Assistant Town Manager/Human Resources Director

Name/Title

Originating Department: Town Manager	Costs: \$ 0.00 Funding Source: Acct. # [] Finance _____	<u>Attachment:</u> Resolution and Copy of the Ground Lease between the Town of Lake Park and FD P3 LP BOAT STORAGE, LLC for the Boat Storage Component
Advertised: Date: _____ Paper: _____ [x] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	<u>Yes I have notified everyone: BMT</u> OR Not applicable in this case ____ Please initial one.

Summary Explanation/Background:

At its August 2, 2023 meeting, the Town Commission approved the execution of the P3 Comprehensive Agreement (the “Agreement”) between the Town of Lake Park and Forest Development P3 LPM, LLC (collectively “the parties”) for the enhancement of the Lake Park Harbor Marina.

Pursuant to Article 4 of the Agreement, the parties are required to enter into four separate ground leases for components of the enhancement project (i.e., the Hotel Component, the Boat Storage Component, the Public Marina Component, and the Marina Restaurant Component). The purpose of this agenda item is to approve and authorize the Mayor to execute the ground lease for the Boat Storage Component.

The Boat Storage Component ground lease is attached as an exhibit to the attached Resolution.

Staff recommends approval.

Recommended Motion: I move to approve Resolution 22-04-24.

RESOLUTION 22-04-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A GROUND LEASE WITH FD P3 LP BOAT STORAGE, LLC FOR THE BOAT STORAGE COMPONENT OF THE QUALIFYING PROJECT FOR THE RE-DEVELOPMENT OF THE LAKE PARK HARBOR MARINA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes and

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the "Developer"), is developing a Qualifying Project involving the redevelopment of six (6) parcels of land owned by the Town (the "**Land**"), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, all of which are part of the Lake Park Harbor Marina (the "**Marina**"); and

WHEREAS, in accordance with Fla. Stat. §255.065, the Town and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (the "Comprehensive Agreement"), memorializing their respective rights and obligations with respect to the development of the Qualifying Project; and

WHEREAS, pursuant to the Comprehensive Agreement, the Town and Developer have agreed that Town and four (4) special purpose entities formed by Developer will enter into four (4) separate ground leases for portions of the Marina, known as the "Hotel

Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, in accordance with the Comprehensive Agreement, a 99 year Ground Lease (“Lease”) for the Boat Storage Component has been negotiated between FD P3 LP Boat Storage, LLC and the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS

Section 1. The whereas clauses are hereby incorporated herein.

Section 2. The Town Commission hereby approves a Ground Lease for the Boat Storage Component Ground Lease with FD P3 LP Boat Storage, LLC a copy of which is attached hereto and incorporated herein as Exhibit 1.

Section 3. The mayor is hereby authorized and directed to execute the Boat Storage Component Ground Lease on behalf of the Town.

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

#5480349 v1 26508-00032

GROUND LEASE
(Boat Storage Component)

THIS GROUND LEASE (this “**Lease**”), dated as of _____, 2024 (the “**Effective Date**”), is entered into by and between the **TOWN OF LAKE PARK, FLORIDA**, a Florida municipal corporation (“**Landlord**”), and **FD P3 LP BOAT STORAGE, LLC**, a Florida limited liability company (“**Tenant**”) (collectively, the “**Parties**” and individually, a “**Party**”).

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the “**Developer**”), an affiliate of Tenant, submitted to Landlord an unsolicited proposal for a Qualifying Project (the “**Proposal for Redevelopment**”) involving the redevelopment of six (6) parcels of land owned by Landlord (the “**Land**”), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, and commonly known as Lake Park Harbor Marina (the “**Marina**”); and

WHEREAS, the Town Commission selected the Developer’s Proposal for Redevelopment; and

WHEREAS, in accordance with said §255.065, Landlord and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (as the same may be amended or supplemented, collectively, the “**Comprehensive Agreement**”), memorializing their respective rights and obligations with respect to the redevelopment of the Marina; and

WHEREAS, all capitalized terms used but not otherwise defined in this Lease shall have the respective meanings ascribed to them in the Comprehensive Agreement; and

WHEREAS, pursuant to the Comprehensive Agreement, Landlord and Developer have agreed that Landlord and four (4) special purpose entities formed by Developer shall enter into four (4) separate ground leases for portions of the Marina, on which will be developed the “Hotel Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, in accordance with the Comprehensive Agreement, Landlord and Tenant desire to enter into this Lease to document Tenant’s lease from Landlord of a portion of the Marina hereinafter described on which will be developed the Boat Storage Component, all in accordance with the terms and conditions hereinafter set out.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **DEMISE.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all of the area shown on the plan attached hereto as **Exhibit A** and made a part hereof (the “**Site Plan**”), and more particularly described on **Exhibit B**, attached hereto and made a part

hereof, together with all appurtenant easements and rights thereto (collectively, the “**Premises**”). Landlord and Tenant hereby acknowledge and agree that this Lease shall be subject to the terms, conditions and provisions of the Comprehensive Agreement only to the extent the same pertain to the Boat Storage Component and that only a default under the terms of the Comprehensive Agreement that pertain to the Boat Storage Component shall constitute a default under this Lease.

2. **TERM.** The term of this Lease (the “**Term**”) shall be ninety-nine (99) years, commencing on the later of (i) the Effective Date; (ii) the earlier of (A) the date of the modification or termination of the Deed Restrictions and Reverter Clauses to Landlord’s and Developer’s reasonable satisfaction, and (B) the date that Developer notifies Landlord in writing that it intends to proceed with the Project even if the Deed Restrictions and Reverter Clauses are not fully terminated; (iii) August 2, 2025 (the “**Commencement Date**”). Notwithstanding the foregoing, in the event that the Deed Restrictions and Reverter Clauses have not been terminated or modified to the Developer’s reasonable satisfaction and the Developer has not notified Landlord in writing that it intends to proceed with the Project despite the fact that the Deed Restrictions and Reverter Clauses have not been fully terminated, Tenant shall have the right to terminate this Lease by written notice to Landlord on or before August 2, 2025.

3. **LEASE PAYMENTS.** As consideration for Landlord’s execution of this Lease with Tenant, Tenant shall make payments to Landlord in accordance with the schedule attached hereto as **Exhibit C** (the “**Lease Payments**”). During the Term, Tenant shall also be responsible for all real estate taxes (including ad valorem taxes and non-ad valorem assessments) assessed with respect to the Premises and for all expenses incurred in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises. In addition, Tenant shall pay or cause the Developer to pay the portion of the P3 Assessment Fee in the total amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) and the Building Permit Fee (as such terms are defined in the Comprehensive Agreement) applicable to the Boat Storage Component, which payments shall be made on or before August 2, 2024 in accordance with the Comprehensive Agreement. Except as otherwise expressly set forth in this Lease, Landlord shall not be responsible for any costs, expenses, or charges of any kind or nature respecting the Premises and Landlord shall not be required to render any services of any kind to Tenant or to the Premises. Landlord shall receive the Lease Payments free and clear of any and all impositions, taxes, liens, charges, deductions or expenses of any nature whatsoever in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises.

4. **IMPROVEMENTS.** Tenant hereby agrees to develop the Boat Storage Component on the Premises in accordance with the terms and conditions of the Comprehensive Agreement, to the extent such terms and conditions apply to the Boat Storage Component. Tenant covenants that the construction of all improvements at the Premises (the “**Improvements**”) shall be at Tenant’s sole cost and expense and in accordance with all applicable legal requirements. Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant. Tenant shall notify any contractor engaged in the construction of the Improvements of the foregoing, and the knowing or willful

failure of the Tenant to provide such notice to the contractor(s) shall render the contract between the Tenant and the contractor voidable at the option of the contractor. In the event any such lien is filed against the fee simple interest in the Premises as a result of any construction thereon by Tenant or on Tenant's behalf, then and in that event, Tenant shall cause said lien to be discharged or bonded over within thirty (30) days of Tenant's actual knowledge of same. The failure to do so shall, at the option of Landlord, constitute a breach of this Lease. If Tenant fails to have such lien or claim for lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, shall have the right to pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's reasonable expenses and attorneys' fees.

Subject to the terms and conditions of this Lease, until the expiration or earlier termination of this Lease, (a) all Improvements shall be and remain the property of Tenant, and (b) Tenant shall have the rights and benefits of ownership of the Improvements, including, without limitation the right to claim depreciation of the Improvements for tax purposes.

5. USE OF PREMISES. It is expressly agreed that the Premises may be used during the Term only for any purposes permitted pursuant to the Comprehensive Agreement or as may permitted by the applicable governmental authority and may not use the Premises for any purpose in violation of the Deed Restrictions and Reverter Clauses to the extent the same have not been amended or terminated of record. It is the obligation of the Developer to work out alternative locations that would provide for seamless operation of current users in that location during construction. Tenant, its agents, employees, customers, and invitees shall have free and unobstructed right to use the Premises for such purposes. Tenant shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the Improvements, or any activity or condition on or at the Premises. Tenant shall have access to the Premises twenty-four (24) hours per day, 365 days per year. Tenant shall have the right to place signs at the Premises provided such signs comply with the local ordinances and regulations. Upon the expiration of the Term, upon Landlord's request, Tenant shall remove all signage and shall restore and repair any damage caused by the installation or removal of such signs.

6. MAINTENANCE AND REPAIR. Throughout the Term, Tenant, at its sole cost and expense, shall (a) keep and maintain the Premises including all Improvements of every kind thereon and appurtenances thereto, in good order and condition, and (b) make such repairs, replacements and renewals (collectively, "**Repairs**") to the Premises as may be necessary or appropriate to keep and maintain the Premises in good order and condition, whether such Repairs are ordinary or extraordinary, foreseen or unforeseen. Without limiting the generality of the foregoing, Tenant shall keep and maintain all portions of the Premises and all driveways, sidewalks, parking areas, curbs and access ways adjoining the Premises in a clean and orderly condition, and shall keep and maintain all open areas of the Premises in a neat and orderly condition and perform all necessary landscaping work. All Repairs shall be promptly made with materials and equipment, which are at least equal in quality to those in place. Landlord shall not be obligated to make any repairs or replacements of any kind, nature, or description, whatsoever, to the Premises or the Improvements thereon.

7. INDEMNIFICATION.

(a) Subject to the subrogation provisions of this Lease, Tenant agrees to indemnify and hold Landlord and its former and current elected and appointed officials, agents, consultants and employees (collectively, “**Landlord Parties**”) harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys’ fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, any Landlord Party arising out of, from, or in any way connected with or arising from the negligence, recklessness, or intentional wrongful misconduct of Tenant in the performance of its obligations under this Lease. Notwithstanding the foregoing, Tenant shall not be required to indemnify any Landlord Party with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence and/or willful misconduct of such Landlord Party. To the extent this indemnification clause or any other indemnification clause in this Lease is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties’ intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

(b) Tenant shall not have any obligation to indemnify or defend the Landlord Parties against any claims brought against any Landlord Party by any third party challenging: (i) Landlord’s legal authority to lease all or any portion of the Premises; (ii) the Town Commission’s judgment in leasing all or any portion of the Premises; or (iii) Landlord’s decision to enter into this Lease or the terms and provisions of this Lease, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. Provided however, that if any third party brings any claims against Landlord and Tenant, Tenant shall have the responsibility to defend the allegations against it. The provisions of this Section shall survive the expiration or earlier termination of this Lease. Any tort liability to which Landlord is exposed under this Lease shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section § 768.28, Florida Statutes, as it may be amended. Landlord expressly does not waive any of its rights and immunities under § 768.25.

8. TAXES. During the Term, Tenant shall assume full responsibility for and shall pay all taxes and assessments that accrue to the Premises or to the Improvements thereon, including sales and property taxes (including ad valorem taxes and non-ad valorem assessments). Tenant shall obtain, if available, a separate tax billing or assessment for the Premises, and Tenant shall pay the ad valorem real property taxes attributable to the Premises only. If a separate billing or assessment for the Premises is not available, Tenant shall pay its pro rata share of the cost incurred by Landlord for real property taxes upon the Project. Tenant agrees to reimburse Landlord within thirty (30) days after receipt of an itemized statement showing the pro rata amount due by Tenant.

In no event shall Tenant be obligated to pay any of Landlord’s administrative fees relating to taxes nor shall Tenant be obligated to pay any interest or penalties imposed for late payment or otherwise unless caused by Tenant. Any real property taxes shall be apportioned so that Tenant shall pay only that portion of real property taxes or installments thereof as fall within the Term. Tenant shall not be obligated to pay any income tax, excise tax or other similar tax or charge, or

inheritance, franchise, capital levy transfer, estate, succession or other similar tax or charge that may be payable by or chargeable to Landlord under any present or future law of the United States or the state in which the Premises are located or imposed by any political or taxing subdivision thereof. Tenant shall have the right, by appropriate proceedings, to protest or contest any assessment or reassessment for real property taxes, or any special assessment, or the validity of either, or of any change in assessments or the tax rate and Landlord agrees to reasonably cooperate with Tenant in any such protest or contest. If Landlord is unwilling to pursue such protest or contest, then Tenant may do so in Landlord's name at Tenant's expense. Landlord agrees not to initiate or endorse any action or application which would increase Tenant's monetary obligations under this Section.

9. INSURANCE; WAIVER OF SUBROGATION. During the Term, Tenant shall comply with all of the insurance requirements imposed upon the Developer pursuant to the Comprehensive Agreement only to the extent the same are applicable to the Boat Storage Component.

Landlord and Tenant, for themselves and their respective insurers, hereby release each other of and from any and all claims, demands, actions and causes of action, (including, without limitation, subrogation claims), for loss or damage to their respective property located within or upon, or constituting a part of the Premises, even if the loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies or, in the case of Landlord, if Landlord elects to self-insure. Landlord and Tenant shall each cause each insurance policy obtained by it to provide that each insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy. The foregoing waiver of subrogation shall also apply in the event that Landlord elects to self-insure.

10. UTILITIES. During the Term, Tenant, at its sole cost and expense, shall take such action as may be necessary to procure the utility services required for Tenant's operation of the Premises, including, without limitation, making arrangements to extend and connect utility lines to and within the Premises. Tenant shall pay all charges for utility services used on the Premises during the Term. At Landlord's request from time to time (but no more frequently than twice in any calendar year), Tenant shall deliver to Landlord receipts or other evidence satisfactory to Landlord indicating the timely payment of utility expenses.

Landlord makes no representation or warranty with respect to the availability or sufficiency of any utility service to the Premises. Landlord is not required to furnish any utility services to Tenant and shall not be liable for the failure of any utility services or for the untenability of the Premises or other damage or loss resulting from the unavailability, interruption, inadequacy or termination of, any utility services.

11. DEFAULT. The following conditions shall be considered a "**Default**" by Tenant hereunder:

(a) Tenant's failure to pay any monetary sum as provided in this Lease which continues for thirty (30) days following Tenant's receipt of notice from Landlord to that effect (a "**Monetary Default**"); and

(b) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Lease that Tenant must observe or perform, other than a Monetary Default, where the failure continues for a period of ninety (90) days after Tenant's receipt of written notice from Landlord; provided, however, that if the nature of the obligation that Tenant has failed to perform is such that more than ninety (90) are reasonably required for its cure, a Default will not occur so long as Tenant commences the cure within such ninety (90)-day period and continuously prosecutes the cure to completion (a "**Non-Monetary Default**")

If a Monetary Default occurs hereunder, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Boat Storage Component), Landlord may, subject to any and all cure and notice provisions contained in this Lease, do the following: (i) commence a proceeding to terminate this Lease, or (ii) repossess the Premises, with or without terminating this Lease.

If a Non-Monetary Default occurs and is continuing, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Boat Storage Component), Landlord shall have the right, in its sole election, then, or at any time thereafter while such Default shall continue to (i) remedy the same and charge Tenant for the reasonable costs thereof (including reasonable interest thereon), (ii) sue for specific performance of Tenant's obligations under this Lease; or (iii) commence a proceeding to terminate this Lease.

In the event of the occurrence of any Landlord's default as is detailed in this Lease which is not cured within sixty (60) days of Tenant's notice to Landlord, or such longer period of time as may be necessary to cure defaults which are not subject to being cured within such sixty (60) day period, Tenant shall have the right, in its sole election, then, or at any time thereafter while such Landlord's default shall continue to (i) remedy the same and charge Landlord for the costs thereof (including reasonable interest thereon), or (ii) sue for specific performance of Landlord's obligations under this Lease; or (iii) such other remedy as may be available at law or in equity.

Subject to the terms of this Section, all rights and remedies of Landlord and Tenant are cumulative, and the exercise of any one shall not be an election excluding Landlord or Tenant at any other time from exercising a different or inconsistent remedy. No waiver by Landlord or Tenant of any covenant or condition shall be deemed to imply or constitute a further waiver of the same at a later time.

12. CASUALTY.

(a) General. If at any time during the Term, any Improvements are damaged or destroyed by fire or other casualty (a "**Casualty**"), Tenant shall promptly give written notice thereof to Landlord. Tenant's obligations under this Lease shall not be affected by any Casualty except as provided in this Section. Lease Payments shall not abate during the period when the

Premises are not usable by Tenant due to damage or destruction, provided, however, Tenant shall receive a credit against the Lease Payments for the relevant period in an amount equal to any insurance proceeds actually received by Landlord with respect to such period.

(b) Restoration.

(i) Upon the occurrence of a Casualty, unless this Lease is terminated pursuant to Section 12(c), Tenant shall proceed, at its sole cost and expense and with commercially reasonable diligence, to carry out or cause to be carried out any necessary demolition and debris removal and to repair, restore, replace or rebuild the Improvements as nearly as reasonably practical to their condition, quality and character immediately prior to such damage or destruction, with such changes or alterations as may be approved by Landlord or as may be required by Governmental Authority (the “**Restoration**”).

(ii) All insurance proceeds shall be applied first to reimburse Tenant for the necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys’ fees and disbursements) (the “**Net Insurance Proceeds**”). The balance remaining shall be paid and applied in accordance with the provisions of this Section 12(b). In the event of a Casualty resulting in damage to the Improvements of less than \$2,000,000.00, the Net Insurance Proceeds shall be paid directly to Tenant and used by Tenant to pay the costs of the Restoration of the Improvements, subject to and in accordance with the provisions of this Section 12(b) and any Leasehold Mortgage. In the event of a Casualty resulting in damage to the Improvements of \$2,000,000.00 or more, the Net Insurance Proceeds shall be paid to the Insurance Depository (as hereinafter defined) and shall be held, invested and disbursed, subject to and in accordance with the provisions of this Section 12(b) and any leasehold mortgage. The “**Insurance Depository**” shall mean an institutional lender jointly selected by Landlord and Tenant (or if the provisions of any leasehold mortgage so provide, as selected by the holder of any Leasehold Mortgage (and may be the Leasehold Mortgagee)) to perform the functions described herein.

(iii) Subject to the terms of any Leasehold Mortgage, the Insurance Depository shall invest and reinvest the Net Insurance Proceeds in United States government securities backed by the full faith and credit of the United States government. The income from the investment of the Net Insurance Proceeds shall be part of the Net Insurance Proceeds and shall be held, invested, and disbursed in the same manner as the balance of the Net Insurance Proceeds. All reasonable costs, fees, expenses and charges of the Insurance Depository in connection with the collection, investment, administration and disbursement of the Net Insurance Proceeds shall be paid by Tenant upon demand by the Insurance Depository. In the event that Tenant shall fail to pay such costs, fees, expenses and charges upon demand, the Insurance Depository may deduct the amount thereof from the Net Insurance Proceeds.

(iv) The Insurance Depository shall disburse the Net Insurance Proceeds from time to time in accordance with requests for disbursement (each, a “**Disbursement Request**”) made by Tenant and approved by the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord. No disbursement of Net Insurance Proceeds shall be made without the prior written approval of the then Leasehold Mortgagee, or, if there is no Leasehold

Mortgagee, Landlord. Landlord shall be obligated to approve a Disbursement Request provided that Tenant has complied with the requirements of this Section.

(v) Subject to the other requirements of this Lease, Net Insurance Proceeds shall be disbursed periodically by the Insurance Depository as the Restoration progresses in amounts not exceeding 90% of the value of labor and materials incorporated into the work. The remaining 10% will be disbursed upon final completion of the Restoration.

(vi) If at any time during the course of the Restoration the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord, reasonably determines that the undisbursed portion of the Net Insurance Proceeds will not be sufficient to complete the Restoration, Tenant shall deposit the difference, as reasonably determined by Leasehold Mortgagee or Landlord, as applicable, with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the balance of the Net Insurance Proceeds.

(vii) All Restoration work shall be performed by Tenant in accordance with the provisions of Section 4.

(viii) Except as otherwise provided in any Leasehold Mortgage or any related loan documents, in the event that (a) Tenant shall fail to commence or complete the Restoration as required by this Section or otherwise defaults in the performance of its obligations under this Section, or (b) a default beyond any applicable notice and cure periods shall occur before or during the course of the Restoration, the Net Insurance Proceeds shall be paid to and retained by Landlord.

(ix) Upon final completion of the Restoration and compliance with the requirements for the final disbursement, any excess Net Insurance Proceeds shall be paid to Tenant.

(c) Termination by Tenant.

(i) Subject to the terms of any Leasehold Mortgage or any related loan documents, upon the occurrence of Casualty during the last thirty (30) years of the Term or if at any time during the Term the Improvements are substantially destroyed and estimated cost of the Restoration would exceed one hundred ten percent (110%) of the Maximum Required Restoration Cost (as hereinafter defined), then, instead of carrying out the resulting Restoration, Tenant, at its option, may elect to terminate this Lease by written notice to Landlord given within thirty (30) days after the Casualty or the estimated cost of such Restoration shall have been determined, whichever last occurs. After making such election, Tenant shall proceed with reasonable diligence to

(A) demolish the damaged portion of the Improvements to street grade;

(B) remove all debris from the Premises;

(C) put the Premises in good, safe, lawful, clean and orderly condition (collectively, the “**Demolition**”). The Demolition shall be carried out at Tenant’s sole cost and expense. Upon completion of the Demolition, as certified by the architect handling the Demolition and upon payment of all Lease Payments payable under this Lease through the date of such completion, this Lease shall expire and terminate with the same force and effect as though the date of such completion were the Termination Date; and

(D) provide evidence reasonably satisfactory to Landlord that all subleases have been terminated.

The term “**substantially destroyed**” shall mean and refer to that condition where the use and occupancy of substantially all the Improvements have been materially adversely affected and the estimated cost of the resulting Restoration would exceed \$2,000,000.00. The term “**Maximum Required Restoration Cost**” shall mean and refer to the total of (i) the insurance proceeds payable in respect of any loss which is the subject of the Restoration for which such determination is to be made (excluding the proceeds of any business interruption or rent loss insurance) plus the deductible amount under any applicable insurance policy or, in the case of any taking which is the subject of such Restoration, the portion of any Award (as hereinafter defined) payable in respect thereof which is available for such Restoration, *plus* (ii) any additional insurance proceeds that would have been payable in respect of any such loss if Tenant had complied with all relevant obligations of Tenant under this Lease and all relevant obligations of Tenant under all insurance policies (excluding the proceeds of any business interruption or rent loss insurance), *less* (iii) necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys’ fees and disbursements).

(d) Tenant’s Obligations Not Affected. Tenant shall be obligated to carry out, or cause to be carried out, the Restoration pursuant to Section 12(b) or the Demolition pursuant to Section 12(c), as the case may be, regardless (except for Landlord’s negligence or willful misconduct) of the cause of the loss which is the subject of such Restoration or Demolition, whether or not insurance shall have been in effect with respect to such loss, whether or not any proceeds from any such insurance shall be paid by the insurer, and whether or not any such insurance proceeds shall be sufficient to cover the cost of such Restoration or Demolition. Anything herein to the contrary notwithstanding, unless caused by Landlord’s negligence or willful misconduct, Landlord shall not be obligated to carry out any Restoration or Demolition. Landlord shall not be liable for any inconvenience, loss of business or annoyance arising from any damage or destruction of or to the Improvements or from any Restoration or Demolition, whether carried out by Landlord or Tenant.

(e) Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease.

13. CONDEMNATION.

(a) Notice. Landlord and Tenant each agree to give the other written notice of any taking by exercise of the power of condemnation or eminent domain, whether by legal

proceedings or otherwise (“**Taking**”) of all or any portion of the Premises promptly after receiving notice thereof. Landlord agrees not to initiate or endorse any Taking which would materially interfere with Tenant’s ability to use the Premises for the use(s) permitted under this Lease.

(b) Total Taking. In the event of a Taking (other than for temporary use) of the entire Premises or such a substantial part of the Premises that the remaining portion of the Premises, after Reconstruction, would be unsuitable for the continued use and occupancy for the uses permitted hereunder (a “**Total Taking**”):

(i) this Lease shall terminate as of the date that possession is delivered to the condemning authority;

(ii) Lease Payments shall be apportioned as of the date the Lease terminates; and

(iii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys’ fees and disbursements). The amount of any condemnation award or payment remaining after first reimbursing Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award or payment (including, without limitation reasonable attorneys’ fees and disbursements) (the “**Net Condemnation Proceeds**”) shall be apportioned between Landlord and Tenant in the manner set forth in this Section.

(c) Partial Taking. In the event of any Taking (other than for temporary use) which is not a Total Taking:

(i) this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Partial Taking;

(ii) there shall be an equitable abatement of the Lease Payments payable under this Lease based on the portion of the Premises taken;

(iii) any condemnation award or payment shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys’ fees and disbursements);

(iv) Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition and character immediately prior to such Partial Taking (the “**Reconstruction**”), except for any reduction in area caused thereby. The work performed under this Section shall be performed in accordance with the provisions of Section 4;

(v) the Net Condemnation Proceeds and any sums deposited by Tenant pursuant to Section 13(c)(vi) (collectively, the “**Reconstruction Funds**”) shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction, subject to substantially the same terms and conditions as are applicable to the Net Insurance Proceeds under Section 12;

(vi) Tenant shall be solely responsible for any costs of Reconstruction which are in excess of the Net Condemnation Proceeds. If, at any time, Landlord reasonably determines that the Net Condemnation Proceeds will be insufficient to pay the remaining costs of Reconstruction, Tenant shall deposit the difference with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the Net Condemnation Proceeds;

(vii) any balance of the Reconstruction Funds remaining after completion of the Reconstruction shall be apportioned between Landlord and Tenant in accordance with the provisions of this Section 13.

(d) Net Condemnation Proceeds/Reconstruction Funds.

(i) In the event of a Total Taking, the Net Condemnation Proceeds shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(ii) In the event of a Partial Taking, any Reconstruction Funds remaining after completion of the Reconstruction shall be applied first to reimburse Tenant for any sums deposited by Tenant pursuant to Section 13(c)(iv). The balance, if any, shall be apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(iii) In determining the fair market value of Landlord’s interest in the Premises, due consideration shall be given to the fair market value of the Premises, as encumbered by the Lease, taking into account the remaining useful life of the Improvements at the expiration of the Term, as if such Taking had not occurred.

(e) Procedure for Apportioning Funds.

(i) Landlord and Tenant shall attempt, in good faith, to agree upon the apportionment of the Net Condemnation Proceeds or remaining Reconstruction Funds between Landlord and Tenant.

(ii) In the event that Landlord and Tenant are unable to agree upon the apportionment, either party shall have the right to submit such dispute (an “**Apportionment Dispute**”) to arbitration in accordance with the provisions of this Section and the arbitration rules of the American Arbitration Association then in existence.

(iii) During the first ten (10) days after either party notifies the other of its desire to submit the Apportionment Dispute to arbitration, Landlord and Tenant shall attempt to agree upon a single person (the “**Expert**”) who (a) shall be MAI certified, (b) shall have a minimum of ten (10) years’ experience in appraisal of real estate in the State in which the Premises are located, and (c) has not conducted within the previous three (3) years, does not presently conduct, and does not anticipate conducting a material amount of business with either Landlord or Tenant or their Affiliates, or otherwise have a financial interest in either Landlord or Tenant or their Affiliates and who is otherwise independent (the “**Expert Qualifications**”). If the parties agree upon a single Expert, each of them shall be responsible for one-half of the costs of the Expert so appointed. If Landlord and Tenant are unable to agree upon a single Expert, then within ten (10) days after the expiration of the period for agreeing upon a single Expert, each party, by giving notice to the other, shall appoint an Expert who meets the Expert Qualifications. Such notice shall be accompanied by a statement of all business conducted by the party making the appointment, and its Affiliates, with the Expert so appointed. If a party does not appoint an Expert within ten (10) days after the other party has given notice of the name of its Expert, the single Expert selected shall then be responsible for deciding the Apportionment Dispute.

(iv) If the two Experts are appointed by the parties as provided in this Section, they shall meet promptly and attempt to decide the Apportionment Dispute in accordance with the provisions of this Section. If they are unable to agree upon a resolution of the Apportionment Dispute within twenty (20) days after the second Expert has been appointed, the two Experts shall attempt to select a third Expert meeting the Expert Qualifications, within ten (10) days after the expiration of the period for the two Experts to render a decision. If the two Experts are unable to agree upon a third Expert within such period, either of the parties to this Lease may apply to the American Arbitration Association for the appointment of a third Expert who meets the Expert Qualifications. The third Expert, whether selected by the two Experts or by the American Arbitration Association, shall then be responsible for deciding the Apportionment Dispute. Each of the parties shall be responsible for the costs of its own Expert and one-half of the costs of the third Expert.

(v) In rendering a decision, the Expert(s) shall be entitled to solicit and receive both oral and written evidence, to conduct hearings and meetings and to consider any and all evidence which he deems necessary or appropriate to render his decision; provided, however, that in no event shall the Expert(s) conduct any *ex parte* hearings or otherwise receive oral evidence or testimony from any party outside the presence of the other party or, in the case of written evidence, unless a copy of such evidence is simultaneously delivered to the other party. The Expert(s) shall have no power to change the provisions of this Lease in any respect, and the jurisdiction of the Expert(s) is expressly limited accordingly.

(vi) The Expert(s) shall render a decision as soon as possible. Such decision shall be binding, final and conclusive on the parties (except in the case of manifest error), and judgment thereon may be entered in a court of competent jurisdiction.

(f) Taking For Temporary Use. In the event of a Taking of all or any portion of the Premises for temporary use or occupancy (a “**Temporary Taking**”):

(i) this Lease shall not terminate, there shall be no reduction in the Lease Payments payable under this Lease, and Tenant shall continue to perform and observe all of its obligations under this Lease as though such Taking had not occurred except only to the extent that it may be prevented from so doing;

(ii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys' fees and disbursements);

(iii) the Net Condemnation Proceeds shall be held by the Insurance Depository and applied to the payment of Lease Payments coming due under this Lease. If the Temporary Taking extends beyond the expiration of the Term, Landlord shall be entitled to the portion of the Net Condemnation Proceeds allocable to the period after the expiration date;

(iv) at the termination of the Temporary Taking (whether prior or subsequent to the expiration date), Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition prior to such Temporary Taking. The portion of the Net Condemnation Proceeds allocable to such Reconstruction shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction upon substantially the same terms and conditions as are applicable to the Restoration Funds under Section 12. Tenant shall be responsible for any costs in excess of the amount of the award;

(v) any balance remaining after application of the condemnation award pursuant to Section 13(f)(ii), 13(f)(iii) and 13(f)(iv) shall be paid to Tenant.

(g) Survival. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

14. LANDLORD ENCUMBRANCES. It is expressly understood and agreed that Landlord's fee interest in the Land is not subordinate to any Leasehold Mortgage (as hereinafter defined). Tenant has no right to, and shall not, place or create any mortgage or other lien or encumbrance purporting to encumber Landlord's fee interest in the Land. In the event Landlord elects to encumber the Land or any portion thereof with a fee mortgage, such fee mortgage shall be subordinate to Tenant's rights under this Lease and upon Tenant's request, Landlord shall execute and cause such fee mortgagee to enter into a recognition, non-disturbance and attornment agreement with Tenant, substantially in the form attached hereto as **Exhibit F** or such other form as Landlord, Tenant, such fee mortgagee and any Leasehold Mortgagee may mutually agree to.

15. LEASEHOLD MORTGAGE.

(a) Tenant may from time to time, and without the consent of Landlord, secure financing (which may include, without limitation, mortgage loans, general credit lines, bond financing, including Community Development District bond financing, and CPACE financing) from banks, insurance companies, other financial institutions or other lenders (each one, a

“Leasehold Mortgagee”), granting to such Leasehold Mortgagee as security for such financing or general credit lines a mortgage encumbering Tenant’s leasehold interest in the Premises (which may include a collateral assignment of Tenant’s leasehold interest in the Premises with rights of reassignment, hereinafter a **“Leasehold Mortgage”**) and/or a security interest in any furnishings, fixtures, equipment and personalty purchased by or belonging to Tenant, or leased from third parties by Tenant and installed on the Premises by Tenant. To the extent any provision in this Section conflict or are inconsistent with any other provision of this Lease, the provisions of this Section shall control.

Tenant may also, with Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed, apply for any county, state and federal grants that may be available to Landlord (including, without limitation, those available from the Florida Navigational District) for the financial benefit the Marina (collectively, the **“Grants”**) on behalf of Landlord. Landlord agrees to reasonably cooperate with Tenant in connection with Tenant’s application for any such Grants, provided that Landlord shall not be required to incur any cost or liability in connection therewith and Tenant shall be solely responsible for any costs incurred in connection therewith, including without limitation any contribution requirements.

(b) If Tenant shall enter into any such Leasehold Mortgage, the Tenant or Leasehold Mortgagee shall forward to Landlord a copy of such Leasehold Mortgage together with a written notice setting forth the name of the Leasehold Mortgagee and its notice information (address for certified mail and electronic mail (e-mail)).

(c) When giving notice to Tenant with respect to any default under the provisions of this Lease, Landlord shall also serve a copy of such notice upon the Leasehold Mortgagee, in accordance with such Leasehold Mortgagee’s preferred form of notice as previously established pursuant to clause (b) above. No such notice to Tenant shall be deemed to have been given unless a copy of such notice has been mailed to such Leasehold Mortgagee, which notice must specify the nature of each such default.

(d) The Leasehold Mortgagee, upon mailing by Landlord of the notice referred to in subparagraph (c) of this Section, shall have, in addition to any period of grace extended to Tenant under the terms and conditions of this Lease, a period of ninety (90) days within which to cure the default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of Tenant for failure to make Lease Payments or to pay taxes, insurance or other monetary obligations of Tenant hereunder, the Leasehold Mortgagee shall be given written notice of such default by certified mail by Landlord, and the Leasehold Mortgagee shall have thirty (30) additional days from the date the notice of default was mailed within which to cure such default. The Leasehold Mortgagee’s decision to cure, or cause to be cured, any default under the Lease shall be at the Leasehold Mortgagee’s sole discretion and election and Leasehold Mortgagee shall not be required to cure any non-monetary default not within such Leasehold Mortgagee’s control such as an act of bankruptcy.

(e) Each Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Tenant, and Landlord shall accept such performance by any Leasehold Mortgagee as if performed by Tenant. In case Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have

the right (but not the obligation) to cure such default whether the same consists of the failure to make Lease Payments or to pay taxes, insurance, or other monetary obligation or the failure to perform any other matter or thing which Tenant is required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant.

(f) In the case of any default by Tenant, other than in the payment of Lease Payments under this Lease, Landlord, so long as no monetary default beyond any applicable notice and cure periods shall exist, will take no action to effect a termination of the Term of this Lease without first giving to the Leasehold Mortgagee a reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire Tenant's interest under this Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for serving such a notice shall be cured, and provided further, that nothing in this Section shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

(g) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this Section prior to its stated expiration date, Landlord will quit claim to Leasehold Mortgagee any interest in the Improvements and, at the same time, enter into a new lease of the Premises upon the same terms and conditions as this Lease for the remainder of the Term with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, to a corporation or other entity approved to conduct business in the State of Florida, formed by or on behalf of such Leasehold Mortgagee or by or on behalf of the holder of the note secured by the Leasehold Mortgage held by such Leasehold Mortgagee, for the remainder of the Term, effective on the date of such termination, upon the covenants, agreements, terms, provisions and limitations contained in this Lease (including, without limitation, the Lease Payments), provided that such Leasehold Mortgagee makes written request and executes, acknowledges and delivers to Landlord such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to Landlord of all amounts then due to Landlord, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the Lease Payments thereafter becoming due under such new lease. In no event, however, shall such mortgagee or its nominee or designee be required to cure a default under this Lease which is not subject to being cured by such mortgagee or its nominee or designee in order to obtain a new lease. Any new lease referred to in this Section shall not require any execution, acknowledgment or delivery by Landlord in order to become effective as against Landlord and Landlord shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by Landlord of such new lease accompanied by (i) payment to Landlord of all amounts then due to Landlord of which the Leasehold Mortgagee shall theretofore have received written

notice; and (ii) an agreement by the Leasehold Mortgagee to pay all other amounts then due to Landlord of which the Leasehold Mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by Landlord of such new lease, as provided in this subparagraph, Landlord shall be deemed to have executed, acknowledged and delivered to the Leasehold Mortgagee an assignment of all subleases covering the Premises which theretofore may have been assigned and transferred to Landlord and all subleases under which subtenants shall be required to attorn to Landlord pursuant to the terms and conditions of such subleases or this Lease. Such assignment by Landlord shall be deemed to be without recourse as against Landlord. Within ten (10) days after a written request therefore by the Leasehold Mortgagee, such assignment or assignments shall be reduced to writing in recordable form and executed, acknowledged and delivered by Landlord to the Leasehold Mortgagee.

(h) The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment or quitclaim conveyance of this Lease and the Improvements in lieu of foreclosure, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease as provided in subparagraph (j) below, except that such Leasehold Mortgagee may assign this Lease without Landlord's consent to any assignee at any time, provided that prior notice is given to Landlord in accordance with this Lease.

(i) In the event that a Leasehold Mortgagee shall become the owner or holder of Tenant's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Tenant," as used in this Lease, means only the owner or holder of Tenant's interest for the time being so that, in the event of a sale, assignment or other disposition of Tenant's interest in this Lease by the Leasehold Mortgagee, the Leasehold Mortgagee shall be entirely freed and relieved of all covenants and obligations of Tenant under this Lease and it shall be deemed and construed, without further agreement between Landlord and the Leasehold Mortgagee or between Landlord, the Leasehold Mortgagee and the Leasehold Mortgagee's purchaser or assignee at any such sale or upon assignment of Tenant's interest, that the purchaser or assignee of Tenant's interest has assumed and agreed to carry out any and all covenants and obligations of Tenant. The Leasehold Mortgagee's purchaser or assignee shall sign an Assignment and Assumption Agreement of this Lease.

(j) Within ten (10) days after written request by Tenant or by Tenant's Leasehold Mortgagee, or in the event that upon any sale, assignment or mortgaging of Tenant's interest in this Lease by Tenant or Tenant's Leasehold Mortgagee, an offset statement shall be required from Landlord, Landlord agrees to deliver in recordable form a certificate to any proposed Leasehold Mortgagee, purchaser, assignee or to Tenant, certifying (if such be the case) (i) the amount of the Lease Payments due under the Lease, if any, and the date to which Lease Payments have been made; (ii) whether this Lease is in full force and effect; (iii) whether Landlord has any knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) whether there are no defenses or offsets which may be asserted by Landlord against Tenant in respect of obligations pursuant to this Lease as of the date of the estoppel. The estoppel letter shall be certified to Landlord and the Leasehold Mortgagee and none other.

(k) Reference in this Lease to acquisition of Tenant's interests in this Lease by the Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of

Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the Leasehold Mortgage and provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

(l) So long as Tenant's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee that Landlord shall not sell, grant or convey to Tenant all or any portion of Landlord's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee. In the event of any such sale, grant or conveyance by Landlord to Tenant, Landlord and Tenant agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This subparagraph (l) shall not be construed to prevent a sale, grant or conveyance of Landlord's fee simple title by Landlord to any person, firm or corporation other than Tenant, its successors, legal representatives and assigns.

(m) Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of subparagraph (i), above) of a Leasehold Mortgagee; provided that such assignee shall forward to Landlord a copy of such assignment of Leasehold Mortgage, together with a written notice setting forth the name and address of the assignee and its notice information (address for certified mail and electronic mail (e-mail)).

(n) Any Leasehold Mortgage shall be specifically subject and subordinate to Landlord's rights under this Lease. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon Tenant's interest in this Lease or upon the lien of any Leasehold Mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against Landlord or Landlord's interest in this Lease. Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Landlord in the Premises, or any portion of them, be encumbered or subordinated, except for a mortgage on Tenant's leasehold interest.

(o) No Leasehold Mortgagee or other person succeeding to the interest of Tenant in this Lease through or subsequent to an enforcement proceeding shall be liable under this Lease, unless and until such time as it becomes the tenant of the leasehold estate, and then only for such obligations of Tenant which accrue during the period while it remains the tenant of the leasehold estate.

(p) Notwithstanding any provision in this Lease to the contrary, in the event of any Casualty or Taking of the Premises or any portion thereof and if allowed by law or its agreements with Tenant, the most senior Leasehold Mortgagee (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not request or shall not be permitted by law or its agreements with Tenant to do so) shall be permitted to receive insurance proceeds and/or condemnation awards otherwise payable to Tenant and shall be permitted (but shall not be obligated except as required by law or its agreements with Tenant or as provided in the next sentence) to restore the Premises. In addition, if such Leasehold Mortgagee (by reason of its acquiring Tenant's leasehold estate) shall be obligated under this Lease

to repair or restore the Premises, such obligation shall be limited to the amount of such proceeds or awards actually received by such Leasehold Mortgagee.

(q) Upon Tenant's request, and at no material cost to Landlord, Landlord shall execute such documents or instruments confirming Tenant's right and authority to enter into a Leasehold Mortgage and/or granting a security interest in this Lease and confirming that Landlord will give such Leasehold Mortgagee notice and the right to cure any Default of Tenant as provided herein. In addition, Landlord, upon the request of Tenant or any Leasehold Mortgagee, shall execute such reasonable modifications or amendments of this Lease as shall be required by such Leasehold Mortgagee or by any person to which Tenant has made application for a Leasehold Mortgage provided such modifications or amendments do not, taken as a whole, materially affect Tenant's obligations or materially affect Landlord's rights under this Lease. Landlord shall not unreasonably refuse any such request for such modification or amendment. Further, Landlord agrees to enter into a triparty agreement with Tenant and its lender, upon terms and conditions acceptable to such lender and to Landlord, to set forth the rights of Tenant's lender substantially as provided in this Section. In no case shall Landlord be required to guarantee any loan, provide any financing, or mortgage any of its property.

(r) Landlord and Tenant agree that they will make good faith efforts to assist one another so that Tenant can obtain a commercially reasonable loan to finance the construction of the Boat Storage Component.

16. LANDLORD NON-DISTURBANCE AND RECOGNITION AGREEMENT.

Tenant may enter into one or more subleases for the Premises with subtenants. Provided that Tenant obtain the prior written consent of the subject sublease(s) from Landlord, and Landlord agrees that such consent shall not be unreasonably withheld, conditioned, or delayed, then:

(a) Upon any termination of this Lease, provided the applicable subtenant of the Premises (or any portion thereof) is not in default under its sublease beyond any applicable notice and cure periods, (i) Landlord shall not disturb such subtenant's possession of its subleased premises, nor shall any of such subtenant's rights under its sublease be affected in any way by reason of any default under this Lease by Tenant, provided such subtenant shall attorn and recognize Landlord, as the subtenant's sublandlord under its sublease and (ii) Landlord shall recognize such subtenant's rights under its sublease, as such subtenant's sublandlord under its sublease, and accept such subtenant's attornment.

(b) Upon any such attornment and recognition, the applicable sublease shall continue in full force and effect as, or as if it were, a direct lease between Landlord and the subtenant upon all of the then executory terms, conditions and covenants as are set forth in the sublease prior to the date of attornment, and shall be applicable after such attornment and recognition provided, however, at no time shall Landlord be (i) liable for any prior default by Tenant, as sublandlord under the sublease; (ii) responsible for any monies owing by Tenant, as sublandlord under the sublease; (iii) required to account for any security deposit, other than any security deposit actually delivered to Landlord or for any rent that the subtenant might have paid for more than the current month to Tenant; nor (v) liable for the breach of any representation or warranty (of any nature whatsoever) made by Tenant or to any other party for matters arising prior to the date of attornment.

(c) Upon the request of a subtenant of the Premises (or any portion thereof), Landlord shall enter into a commercially reasonable non-disturbance, attornment and recognition agreement with the subtenant setting forth the terms and conditions of this Section 16 and such other terms as mutually may be agreed upon by Landlord and the subtenant.

17. COVENANT OF QUIET ENJOYMENT. Landlord covenants and warrants that, provided Tenant is not in breach of any material term of this Lease beyond any applicable notice and cure period, Tenant shall peacefully have and enjoy the sole possession of the Premises during the Term free from the adverse claims of any persons, firms or corporations claiming by, through or under Landlord. Landlord agrees to execute any and all easements or rights of way on, over or under the Premises or any part thereof at Tenant's request which are or may be needed or required by Tenant in conjunction with Tenant's use and enjoyment of the Premises; and Landlord agrees to execute any other public utility or governmental body related documents or agreements in the form customarily provided by such public utility or governmental body, which is necessary to fulfill the intent and purposes of this Lease, including, without limitation, the facilitation of, a successful prosecution of all Improvements and construction, signage rights, parking, access, drainage, utilities, communications, lighting, governmental services, the operations by Tenant under this Lease, and all other matters and things contemplated or impliedly necessary under this Lease for its full effectuation, performance or realization. Landlord agrees not to file or cause any zoning change to be made that would affect the Premises without the prior written approval of Tenant. Landlord warrants and represents that there are no mortgages or deeds of trust applicable to the Premises as of the Effective Date.

Landlord represents and warrants that the Premises are owned in fee simple by Landlord; that it is seized of the Premises in fee, subject only to the exceptions set forth on Exhibit D hereto, and that it has entered into this Lease with proper authority. If, at any time during the Term, any indebtedness, lien, assessment, claim, or other matter whatsoever shall arise or shall be asserted which in any way interferes or threatens to interfere with Tenant's use of the Premises as herein provided or referenced, and such indebtedness, lien, assessment, claim, or other matter arises due to Landlord's breach of this Lease or any act or omission of Landlord from and after the Effective Date, then Tenant shall have the right to expend such sums as are necessary to abate said threat or interference and deduct the same from consideration due Landlord until Tenant is reimbursed in full.

18. ASSIGNMENT AND SUBLETTING.

(a) Except as otherwise expressly provided herein, Tenant shall be permitted to sublease any portion of the Premises, in whole or in part, in any manner whatsoever, to subtenants (a "**Premises Tenant**") pursuant to a sublease in the ordinary course of its business (a "**Tenant Lease**") without the consent of Landlord, if the use specified in the Tenant Lease is permitted hereunder and by current and applicable zoning requirements. Tenant also may transfer, license, lease, sublease, and/or assign this Lease and its rights and interests hereunder, without the consent of Landlord, (i) at any time, to an Affiliate (as such term is defined in the Comprehensive Agreement), provided that Tenant or the Developer or a manager who is a knowledgeable manager reasonably approved by Landlord is the manager of such Affiliate; and (ii) from and after the issuance of a certificate of occupancy with respect to the Boat Storage Component, to any third party. Tenant shall also be permitted to transfer, convey or pledge its interest in this Lease to a

Leasehold Mortgagee without the consent of Landlord. Any such sublease, transfer, conveyance or pledge by the Tenant shall be subject to all of the terms and provisions of this Lease. Except as otherwise expressly permitted hereunder, if Tenant seeks to assign, transfer or sell its leasehold interest in this Lease, the express prior written consent of Landlord shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Any such consent to an assignment shall be subject to all of the terms and provisions of this Lease and, provided that the assignee agrees in writing to assume all of the Tenant's rights and obligations under this Lease, shall release Tenant from its obligations under this Lease. Landlord's consent shall not be required for Premises Tenant's certificates of occupancy, building permits, tenant allowances or buildout terms and procedures except as may otherwise be required by Landlord by virtue of Landlord being the Governmental Authority overseeing these items in its regulatory capacity. Within sixty (60) days of executing a Tenant Lease with a Premises Tenant, Lessee shall notify Lessor the Tenant Lease has been executed and the identity of the Premises Tenant.

(b) Should Tenant take any action to assign this Lease without the prior written consent of Landlord as provided in Section 18(a), then any such assignment shall be null and void and of no force and effect.

(c) Any successor or assignee of Tenant's rights and/or obligations under this Lease shall expressly assume in writing performance of such rights and/or obligations and deliver same to Landlord within ten (10) days after consummation of the assignment, transfer or sale.

19. NOTICES. All notices, requests, consents, demands, approvals or other communications required or permitted under this Lease shall be in writing, addressed to the person identified below, and delivered either by: (a) hand delivery, (b) overnight courier by a nationally recognized courier, with all fees prepaid; Registered or Certified Mail, return receipt requested and postage prepaid; or delivered by email with "FORMAL NOTICE UNDER GROUND LEASE" in the subject line:

If to Landlord: Town of Lake Park
 Attention: Town Manager
 535 Park Avenue
 Lake Park, Florida 33403

With a copy to:

Town of Lake Park
 Attention: Town Attorney
 535 Park Avenue
 Lake Park, Florida 33403

If to Tenant: FD P3 LP BOAT STORAGE, LLC,
 c/o Forest Development P3 LPM, LLC
 Attn: Peter Baytarian
 11231 US Highway 1, Suite 354

North Palm Beach, Florida 33408
info@forestdevelopment.com

And to:

Saul Ewing LLP
Attn: Anthony Kang
701 Brickell Avenue, 17th Floor
Miami, Florida 33131
Anthony.kang@saul.com

With a copy to:

Zabik & Associates, Inc.
Attn: Larry Zabik
11398 Okeechobee Blvd, Suite 2
Royal Palm Beach, Florida 33411
lzabik@zabikandassociates.com

Any and all tax notices and information shall also be sent to: Tenant

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, or (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt.

Landlord and Tenant agree that any and all notices given by either party shall be provided simultaneously to any assignee of Tenant or any lender to Tenant when such assignee or lender has been previously identified in writing to the parties along with the appropriate address for such notices. Either Party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

20. MISCELLANEOUS.

(a) Captions. Captions or headings of sections are for convenience only and shall not be considered in construing the meaning of the contents of such section.

(b) Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(c) Prevailing Party. Should Landlord or Tenant institute any legal proceedings against the other for breach of any provisions herein contained, each party in such action shall be

responsible for its own conduct costs and litigation expenses including reasonable attorneys' fees through all levels of appeal.

(d) No Prior Agreements / No Third-Party Beneficiaries. This Lease supersedes and cancels all prior negotiations between the parties, and all other negotiations and understandings are merged into this Lease. This Lease, together with the terms and conditions of the Comprehensive Agreement applicable to the Boat Storage Component, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. The parties acknowledge that there are no other promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between and among them, except as set forth, referenced, or incorporated herein or in the Comprehensive Agreement (to the extent incorporated herein). Furthermore, this Lease is intended solely for the benefit of the parties hereto expressly noted herein and whose signatures appear hereon and their respective permitted successors and assigns, as applicable. No third party shall have any rights or interest herein and there are no and shall be no third-party beneficiaries hereto.

(e) Amendments and Modifications/No Oral Modifications. All amendments or modifications to this Lease must be in writing signed by the Parties. No purported amendments or modifications to this Lease which are oral shall be effective, binding or enforceable.

(f) Interpretation and Gender. The singular shall include the plural, and the masculine, feminine or neuter shall include either of the others as appropriate in context.

(g) Successors and Assigns. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; they shall all be bound jointly and severally by the terms, covenants and agreements herein.

(h) No Waiver. The failure to enforce any particular provision of this Lease on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision.

(i) Estoppel Certificates. Landlord and Tenant agrees, from time to time as may be requested by each other, to execute, acknowledge and deliver within thirty (30) days after being requested to do so an estoppel letter certifying the following to such party as it reasonably may designate, including any Leasehold Mortgagee: (a) that (i) this Lease is in full force and effect and has not been amended, modified or superseded; (ii) Landlord and Tenant are not in default under this Lease; (iii) Tenant has no defense, offset or counterclaim under this Lease or otherwise against Landlord with respect to this Lease or the Premises; (b) the date to which Lease Payments have been paid; and (c) such other information as the requesting party may reasonably request.

(j) Calculation of Time Periods. In the computation of any time periods hereunder shall exclude Saturdays, Sundays, and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday, or a legal holiday shall extend to 6:00 p.m. eastern time of the next business day.

(k) Florida Law and Venue. This Lease and all of its provisions shall be construed in accordance with the laws of the State of Florida. In the case of any legal proceedings, venue shall be Palm Beach County.

(l) Severability. In the event any provision of this Lease is prohibited, unenforceable or invalid under the laws of any jurisdiction, including those of the State of Florida, such prohibition, or unenforceable or invalid provision shall not in any fashion affect the enforceability or validity of the remaining provisions hereof.

(m) Construction. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation of this Lease.

(n) No Cross Default. The Comprehensive Agreement contemplates that the “Project” (as defined in the Comprehensive Agreement) will be comprised of the “Hotel Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (collectively the “**Components**” and individually a “**Component**”). The Developer has created a separate entity to be the tenant under this Lease and separate entities to be the tenants under separate ground leases with Landlord with respect to the Hotel Component (the “**Hotel Lease**”), the Public Marina Component (“**Marina Lease**”), and the Marina Restaurant Component (the “**Restaurant Lease**”). The Boat Storage Lease, the Marina Lease and the Restaurant Lease are collectively referred to herein as the “**Other Leases**” and individually as an “**Other Lease**”).

Landlord and Tenant hereby agree that the rights and obligation under the Comprehensive Agreement shall be bifurcated so that (i) any rights and obligations with respect to the Boat Storage Component under the Comprehensive Agreement shall only benefit and be required to be performed by the Tenant under this Lease, any obligation under this Lease shall only apply to the Boat Storage Component under the Comprehensive Agreement, and any breach of the obligations under this Lease or the rights and obligations under the Comprehensive Agreement with respect to the Boat Storage Component shall not affect or constitute a default under the Other Leases; (ii) any rights and obligations with respect to any Component (other than the Boat Storage Component) under the Comprehensive Agreement shall only benefit and be required to be performed by the tenant under the applicable Other Lease, any obligation under the applicable Other Lease shall only apply to the applicable Component of such Other Lease under the Comprehensive Agreement, and any breach of the obligations under such Other Lease or the rights and obligations under the Comprehensive Agreement with respect to the Component applicable to such Other Lease shall not affect or constitute a default under this Lease; and (iii) to the extent of any inconsistency between the terms of this Lease and the terms of the Comprehensive Agreement, the terms of this Lease shall prevail and control.

(o) Landlord Approval. Landlord shall act on requests from Tenant for any consent or approval hereunder in a commercially reasonable manner and shall use commercially reasonable efforts to respond to any such request within twenty (20) days following Landlord’s receipt thereof (unless another time period for such response is expressly provided for herein). Landlord’s response may consist of an approval or disapproval of the request, or a conditional

approval thereof subject to specified conditions, or a request for further data or information, or any combination thereof. If Landlord does not approve, reject or request additional information regarding any request hereunder within twenty (20) days following Landlord's receipt thereof (or another time period expressly provided for herein with respect thereto), Tenant may provide to Landlord a second written request, which shall include a legend, printed in capital letters and boldface type, to the following effect: **"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY LANDLORD OF THE ACTION REQUESTED BY TENANT."** Landlord shall be deemed to have approved or consented to such action if Landlord fails to object to or request additional information with respect thereto within ten (10) days of such second request.

Wherever in this Lease the approval or consent of Landlord is required, it is understood and agreed that, unless specifically stated to the contrary, such approval or consent shall be granted or withheld in the reasonable discretion of Landlord or of the Town Manager) of Landlord (the **"Town Manager"**) (as applicable), within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except as may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the Town Manager in the discretion of the Town Manager acting reasonably:

- (i) The exercise of Landlord's rights of entry and inspection;
 - (ii) The exercise of Landlord's right or obligation to execute a joinder in (a) applications for land development approvals or other governmental approvals (including permits) which are necessary for Tenant to obtain from governmental authorities, and where such applications require evidence of the consent of the property owner, and (b) any easement, declaration, amendment or creation of an agreement affecting title to the Premises and any other document as may be requested by Tenant in connection with the development and/or operation of the Premises;
 - (iii) The exercise of Landlord's right to receive and approve or not approve and specify the basis for such disapproval the form of certificates of insurance, policies, limits, and coverages of insurance, bonds, and Environmental Assessments;
 - (iv) The execution of estoppel statements (or any modifications of the terms thereof) to be given by Landlord under this Lease;
 - (v) The approval, if required, of any assignment or sublease; and
 - (vi) Other provisions of this Lease where the act, approval or consent of the Landlord is expressly authorized or required, except any amendment to this Lease shall require the written consent of the Town Commission of the Landlord.
- (p) Further Assurances. Each Party will promptly cooperate each with the other and will execute and deliver any and all written further assurances and/or documents that are reasonably necessary, convenient, or desirable to evidence, complete or perfect (or any combination thereof) the transactions contemplated by this Lease, so long as no further assurance or document to be executed operates to impose any new or additional obligation or liability upon

any Party. Each Party will so perform all other acts that are reasonably necessary, convenient, or desirable for any such purpose, so long as no new or additional obligations or liabilities are incurred as a result thereof.

Additionally, Landlord further agrees that it will execute such documents and perform such acts as Tenant may reasonably require in connection with the development and/or operation of the Premises, including, but not limited to, executing such easements, documents affecting title to the Premises, applications for governmental approvals, modifications and/or termination of existing easements and/or restrictions affecting the Premises, creation of declarations affecting the Premises and such other documents and acts as reasonably requested by Tenant in connection with its development and/or operation of the Premises, provided that such cooperation shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

21. DELAYS. In any case where either party hereto is required to do any act, such party shall be excused from the performance thereof for the duration of delays caused or resulting from Acts of God, war, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, government regulations, moratorium, other causes beyond such party's reasonable control or circumstances or events characterized at law as "force majeure", whether the time for such performance shall be designated by a fixed date, a fixed period of time, or a "reasonable" period of time. In addition, should any lawsuit, legal proceeding, investigation or other legal matter be filed or commenced against Landlord, Tenant, or any other party related to this Lease, which materially affects this Lease, all time periods contained in this Lease shall be delayed until such legal matter is resolved in its entirety, including any and all appellate proceedings or the like. Notwithstanding anything to the contrary set forth in this Section 21 or elsewhere in this Lease, no event of force majeure (or any event deemed to be beyond the control of Tenant) shall be construed to apply to any of Landlord's or Tenant's monetary obligations hereunder or to permit or allow either Landlord or Tenant to delay or defer any such obligation.

22. ENVIRONMENTAL MATTERS.

(a) For purposes hereof, the following terms shall have the following meanings:

(i) **"Environmental Laws"** shall mean all Federal, state and local laws, statutes, ordinances, codes, rules, regulations and other requirements respecting the environment, including but not limited to those respecting: (A) the generation, use, handling, processing, storage, treatment, transportation, or disposal of any solid or hazardous wastes, or any hazardous or toxic substances or materials; (B) pollution or contamination of land, improvements, air (including indoor air), or water (including groundwater); (C) emissions, spills, releases, or discharges of any substance onto or into the land, improvements, air (including indoor air), or water (including groundwater), or any sewer or septic system; (D) protection of wetlands; (E) aboveground or underground storage tanks; (F) air quality (including indoor air quality) or water quality (including groundwater quality); and (G) protection of endangered species. Without limiting the generality of the foregoing, the term "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Sec. 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42

U.S.C., Sec. 6901, et seq., and the Toxic Substance Control Act of 1976, as amended, 15 U.S.C., Sec. 2601, et seq.

(ii) **“Environmental Violation”** shall mean (A) any direct or indirect discharge, disposal, spillage, emission, escape, pumping, pouring, injection, leaching, release, seepage, filtration or transporting of any Hazardous Substance at, upon, under, onto or within the Premises, or from the Premises to the environment, in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (B) any deposit, storage, dumping, placement or use of any Hazardous Substance at, upon, under or within the Premises or which extends to any adjoining property in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (C) the abandonment or discarding of any barrels, containers or other receptacles containing any Hazardous Substances in violation of any Environmental Laws, or (D) any violation of or noncompliance with any Environmental Law.

(iii) **“Governmental Authority”** shall mean any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, special service district or public body, or any court or administrative tribunal.

(iv) **“Hazardous Substances”** shall mean any substance, material or waste defined as a pollutant or contaminant, or as a hazardous, toxic or dangerous substance, material or waste, under any Environmental Law, including, without limitation, petroleum, petroleum products, PCBs and asbestos.

(b) Tenant shall not use, or permit its agents, employees, contractors, subtenants, licensees or invitees to use the Premises for the purpose of treating, producing, handling, transferring, processing, transporting, disposing, using or storing a Hazardous Substance in violation of any Environmental Law. Tenant shall, at Tenant’s own expense, comply with all Environmental Laws as the same affect the Premises or the operations and activities of Tenant, its agents, employees, contractors, subtenants, licensees or invitees (collectively, **“Tenant Parties”**) on or about the Premises.

(c) In the event Tenant becomes aware of any Environmental Violation or any suspected Environmental Violation at the Premises, Tenant shall promptly (a) notify Landlord of such Environmental Violation or suspected Environmental Violation, and (b) deliver to Landlord any notice filed by or received by Tenant with or from any Governmental Authority relating thereto immediately upon filing or receipt thereof.

(d) In the event that, in the reasonable opinion of Landlord, there is a basis to believe that an Environmental Violation exists, Landlord shall have the right to have its environmental consultants (**“Site Reviewers”**) visit the Premises and perform environmental site

investigations and assessments (“**Site Assessments**”) on the Premises for the purpose of determining whether there exists on the Premises any Environmental Violation or any condition which is likely to result in any Environmental Violation. Such Site Assessments may include both above and below the ground testing for Environmental Violations and such other tests as may be necessary, in the opinion of the Site Reviewers, to conduct the Site Assessments. The Site Reviewers shall use their good faith diligent efforts to minimize any interference with the operations of Tenant and other occupants of the Premises. Tenant shall supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and shall make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters.

(e) In the event that there exists any Environmental Violation caused by any Tenant Party, Tenant shall, at its own cost and expense:

(i) promptly and diligently take any and all actions necessary to return the Premises to a condition which is in compliance with Environmental Laws, and which will not impede or limit further development of the Premises;

(ii) provide Landlord, within ten (10) days after Landlord’s request therefor, adequate financial assurances that Tenant will effect remediation in accordance with applicable Environmental Laws. Such financial assurances shall be a bond or letter of credit in form and substance reasonably satisfactory to Landlord and in an amount equal to Landlord’s reasonable estimate of the anticipated cost of such remedial action;

(iii) without limiting the generality of Section 22(e)(i), make all submissions and provide all information required by Environmental Laws. Tenant shall comply with all requests of the United States Environmental Protection Agency, the Florida Department of Environmental Protection and any other Governmental Authority having jurisdiction over the Premises, including any request that a cleanup plan be prepared and that a cleanup be undertaken with respect to the Premises. In such event, Tenant shall, at Tenant’s own expense, prepare and submit appropriate documents, and carry out the approved plans, or take such other action as may be appropriate to eliminate any environmental harm or threat to public health or welfare and to eliminate any potential liability of Landlord or Tenant. Any submissions made by Tenant pursuant to this Section and any action taken by Tenant pursuant to such submissions shall be subject to the prior review and approval of Landlord, which approval shall not be unreasonably withheld.

(f) Tenant shall indemnify, defend and save Landlord harmless from all claims, actions, suits, proceedings, losses, damages, liabilities, fines and expenses (including without limitation fees of attorneys, investigators and experts) arising or alleged to arise from or in connection with (a) any Environmental Violations, and (b) Tenant’s failure to provide all information, make all submissions and take all actions with respect to the Premises required by any Governmental Authority in connection with any Environmental Violations.

22. RADON. Section 404.056 (6), Fla. Stat., requires the inclusion of the following “Notification on Real Estate Documents” at the time of, or prior to, contract for sale and purchase

of any building or execution of a rental agreement for any building: “Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

23. SURRENDER. Upon the expiration or any earlier termination of the Term:

(a) Tenant shall surrender the Premises to Landlord, in good order, condition and repair, reasonable wear and tear, Casualty and Taking excepted;

(b) all right, title and interest of Tenant in and to the Premises shall automatically cease and terminate; and

(c) Tenant shall deliver the following to Landlord, to the extent in the possession or control of Tenant: (a) executed counterparts of any subleases, occupancy, license and concession agreements; (b) executed counterparts of any service and maintenance contracts then affecting the Premises; (c) true and complete maintenance records for the Premises; (d) any original licenses and permits then pertaining to the Premises, including, without limitation, the then existing certificate of occupancy for the Premises; and (e) any warranties and guaranties then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Premises, together with a duly executed assignment thereof to Landlord. Nothing herein contained shall be or be deemed to be a consent by Landlord to any sublease, occupancy, license, concession agreement, service or maintenance contract for a term to expire later than the Expiration Date.

Notwithstanding the foregoing to the contrary, Landlord shall have the right to elect upon the expiration or any earlier termination of the Term, by written notice to Tenant no later than six (6) months prior to the date of such expiration or earlier termination, to require Tenant to raze the Improvements, and clear, grade and seed the former location thereof and put the Premises in good, safe, lawful, clean and orderly condition, in which event Tenant, at its sole cost and expense, shall do so at its sole cost and expense within one hundred and eighty (180) days of such expiration or termination.

24. RIGHT OF FIRST REFUSAL. From and after the date hereof and during the Term, Landlord shall not sell, transfer or otherwise dispose of or convey all or part of Landlord’s fee interest in the Premises to any third party until and unless Landlord shall have obtained a bona fide offer therefor (the “**Landlord’s Offer**”), delivered written notice thereof to Tenant, which notice shall contain a true and accurate copy of Landlord’s Offer, and offered to sell, transfer or otherwise dispose of such fee interest to Tenant at the same price and, except as hereafter provided, upon the same terms and conditions as contained in Landlord’s Offer, and Tenant has not elected to exercise its right of first refusal in accordance herewith.

If Tenant shall either deliver written notice of rejection of Landlord’s Offer to Landlord or fail to deliver written notice of acceptance of Landlord’s Offer within thirty (30) days after the date of receipt of Landlord’s notice, Landlord’s fee interest in the Premises may, during the one

hundred eighty (180) days thereafter, be sold, transferred or otherwise disposed of to the original offeror at the same price and upon the same terms and conditions as contained in Landlord's Offer.

In the event Tenant rejects Landlord's Offer or fails to accept Landlord's Offer in accordance herewith, this Lease and all of its terms and conditions (including this right of first refusal) shall nevertheless remain in full force and effect and Landlord and any purchaser or purchasers of the Premises shall be bound thereby.

Failure of Tenant to exercise its right of first refusal on one or more occasions shall not affect Tenant's right to exercise it on any subsequent occasion. Any sale or transfer of the Premises, or any part thereof, other than in strict compliance with the terms of this Section shall be null and void and of no effect as to Tenant, and Tenant shall be entitled to purchase the Premises from the purchaser upon the same terms and conditions and at the same price specified in Landlord's Offer, provided Tenant notifies Landlord of its election thirty (30) days after receipt of notice that complies with the requirements hereof. The making of Lease Payments to such purchaser or otherwise treating such purchaser as Landlord shall not be deemed to be a waiver of Tenant's right of first refusal or any other right or privilege of Tenant and shall not create an estoppel with respect thereto.

Any sale or transfer of Landlord's interest in the Premises, or any part thereof shall be expressly made subject to all of the terms, covenants and conditions of this Lease. In the event Landlord's Offer provides for the sale and purchase of Landlord's interest in the Premises and other property, Tenant shall only be required to purchase all the Premises in the event it desires to exercise its right of first refusal hereunder.

In the event Tenant exercises its right of first refusal then, notwithstanding the terms of Landlord's Offer (i) Landlord shall convey title to the Premises by warranty deed approved by Tenant and the title company; (ii) title to the Premises shall be free and clear of any liens and encumbrances except the lien for current taxes which are not delinquent at the time of closing and such other exceptions to title as may have been created by Tenant during the Term or as existed on the date hereof and/or were approved by Tenant thereafter; and (iii) title to the Premises shall otherwise comply with the terms of this Lease as they pertain to condition of title. Upon such election by Tenant, Landlord and Tenant agree to act in good faith to consummate a purchase agreement for the Premises incorporating the express terms of Landlord's Offer and other customary terms and provisions for similar transactions of similar property located in the same geographic area as the Premises.

25. **NO BROKER.** Landlord and Tenant represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction and that there are no claims or rights for commissions, finders' fees or other compensation (collectively, "**compensation**") by any person or entity. If any broker or finder asserts a claim for compensation based upon any actual or alleged contact, dealings or communication with Landlord or Tenant, then the party through whom such broker or finder makes its claim shall indemnify and hold the other party (the "**Indemnified Party**") harmless from and against any and all claims, damages, judgments, suits, liabilities, losses, costs and expenses (including without limitation, reasonable

attorneys' fees and court costs) suffered or incurred by or brought against the Indemnified Party in connection with such claim for compensation..

26. MEMORANDUM OF LEASE. Immediately following the execution of this Lease, the parties shall execute and record a Memorandum of Lease in the public records in the form attached hereto as Exhibit E.

27. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR THE RELATIONSHIP OF THE PARTIES CREATED HEREBY. THE PARTIES FURTHER HEREBY WAIVE THE RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE FOREGOING WAIVERS ARE IRREVOCABLE AND MUTUALLY, KNOWINGLY, WILLINGLY, INTENTIONALLY AND VOLUNTARILY MADE AFTER EACH PARTY HAS HAD THE BENEFIT OF OR OPPORTUNITY TO GAIN LEGAL ADVICE AND COUNSEL. EACH PARTY REPRESENTS, WARRANTS AND AFFIRMS TO THE OTHER THAT NO PARTY HAS IN ANY WAY AGREED, REPRESENTED OR OTHERWISE SUGGESTED OR IMPLIED THAT IT WILL NOT FULLY ENFORCE THE FOREGOING WAIVERS IN ALL INSTANCES.

[The Balance of the Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

TENANT:

FD P3 LP BOAT STORAGE, LLC,
a Florida limited liability company

By: _____

Name:

Title:

Date: _____

LANDLORD:

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

Exhibit A

Site Plan

Exhibit B

Legal Description of the Premises

Exhibit C**Lease Payments**

Period	Lease Payment
Calendar Year 2024	\$0
Calendar Year 2025	\$75,000.00
Calendar Year 2026	\$75,000.00
Calendar Year 2027	\$75,000.00
Calendar Year 2028	\$75,000.00
Calendar Year 2029	\$75,000.00
Calendar Year 2030	\$75,000.00
Calendar Year 2031	\$75,000.00
Calendar Year 2032	\$75,000.00
Calendar Year 2033	\$75,000.00
Calendar Year 2034	\$75,000.00

Lease Payments shall be made on or before May 1 of each calendar year from 2025 to 2034

No Lease Payments shall be due or payable commencing with calendar year 2035

Exhibit D

Permitted Title Exceptions

Exhibit E**Form of Memorandum of Lease**

This instrument was prepared by:

Saul Ewing LLP
 Attention: Anthony Kang
 701 Brickell Avenue, FL 17
 Miami, Florida 33131

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (“Memorandum”) is made as of the ____ day of _____, 2023, by and between TOWN OF LAKE PARK, FLORIDA, a Florida municipal corporation, having an address of _____ (“Landlord”), and _____, a Florida limited liability company, having an address of _____ (“Tenant”).

WITNESSETH:

1. That by Ground Lease of even date hereof (the “Lease”), Landlord has demised and leased to Tenant and Tenant has rented from Landlord that certain real property located in Palm Beach County, Florida, as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Premises”), and the rights, easements and privileges granted to Tenant in the Lease.

2. The term of the Lease shall commence on _____, ____ (the “Commencement Date”) and shall expire at 12:00 Midnight on the ninety-ninth (99th) anniversary of the Commencement Date, unless sooner terminated as set forth in the Lease.

3. Pursuant to Florida Statutes Section 713.10 (2023), notice is hereby given that the Lease includes the following provision:

Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant.

4. For all other terms and provisions of the Lease, reference is hereby made to the Lease itself, and all persons are hereby placed on notice of the existence of the Lease and of its terms and provisions. The Lease and exhibits thereto are hereby incorporated by reference in this Memorandum. In the event of any conflict between the provisions of this Memorandum and the Lease, the provisions of the Lease shall govern, control and prevail.

5. Upon the expiration or earlier termination of the Lease for any reason whatsoever, Landlord shall be entitled to unilaterally execute and record a termination of this Memorandum which shall terminate and release this Memorandum. Tenant acknowledges and agrees that Tenant shall not be required to join in or execute such termination and that such termination, as executed only by Landlord, shall be effective to terminate this Memorandum without the joinder or execution by Tenant.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be duly executed and sealed as of the date first above written.

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this ____ day of _____, 2023, by _____ as Mayor of the Town of Lake Park, Florida, a Florida municipal corporation, on behalf of the Town. He/She is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public
My Commission Expires:

[SIGNATURES CONTINUE ON NEXT PAGE]

Witnesses:

TENANT:

_____ By: _____
 Print Name: _____ Print Name: _____
 Title: _____

 Print Name: _____

STATE OF _____)
)SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of [__] physical presence or [__] online notarization this ____ day of _____, 2023, by _____ as a/the _____ of _____, LLC, a _____ limited liability company, on behalf of said entity. He/She is personally known to me or has produced _____ as identification.

 Print Name: _____
 Notary Public
 My Commission Expires:

EXHIBIT "A"
LEGAL DESCRIPTION

[SEE ATTACHED]

Exhibit F

Form of Non-Disturbance and Attornment Agreement

Return to: (enclose self-addressed stamped envelope)

Name: _____

Address: _____

This Instrument Prepared by:

SPACE ABOVE THIS LINE FOR PROCESSING DATA

NON-DISTURBANCE AGREEMENT BY FEE MORTGAGEE **AS TO A LEASEHOLD MORTGAGE(S)**

THIS NON-DISTURBANCE AGREEMENT (this “**Agreement**”) by and between Town of Lake Park, Florida (“**Lessor**” or “**Town**”), having an address at _____, _____, having an address at _____ (“**Tenant**”), _____, having an address at _____ (“**Lender**”), and _____, having an address at _____ (“**Fee Mortgagee**”).

W I T N E S S E T H :

WHEREAS, Tenant is the lessee under that certain Ground Lease with the Lessor dated _____, as may be amended from time to time (the “**Lease**”) with respect to the “Premises” demised under the Lease; and

WHEREAS, Fee Mortgagee has extended a loan to the Town (as may be amended, modified, substituted, or replaced), referred to herein as the “**Fee Loan**.” The Fee Loan is secured by, among other things, a mortgage which encumbers the Town’s interest in the Lease and the Premises, as same may be amended from time to time, together with an assignment of leases (collectively, the “**Fee Mortgage**”); and

WHEREAS, pursuant to the terms of the Lease, Tenant has obtained and may in the future obtain certain loans (“**Loan(s)**”) from lender(s) selected by Tenant (each, together with each lender(s)’ respective successors and assigns, a “**Lender**”), which Loan(s) are and shall be secured by a leasehold mortgage(s) encumbering Tenant’s rights in and to the Lease and the Premises (“**Leasehold Mortgage**”). Notwithstanding anything herein to the contrary, any lender(s) selected by Tenant shall not become a “Lender” under this Agreement until such time as such lender has provided a Lender Notice, as provided in Section 5 of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

1. The recitations heretofore set forth are true and correct and are incorporated herein by this reference.

2. Fee Mortgagee, Town, Tenant and Lender (after the “**Lender Notice**,” as hereinafter defined, is provided for such Lender and after such Lender agrees to be bound by this Agreement) are individually a “**Party**” and collectively “**Parties**.”

3. If and as applicable, Tenant expressly acknowledges that Town has executed and delivered to Fee Mortgagee an Assignment of Leases and Rents (the “**Assignment of Leases**”), which assigns the Lease and the rent and all other sums due thereunder to Fee Mortgagee as security for the Fee Loan. For the avoidance of doubt, Fee Mortgagee expressly acknowledges and agrees that no property of any kind owned by Tenant (including, without limitation, any improvements, fixtures, personal property or other property owned by Tenant) are collateral for the Fee Loan and that Fee Mortgagee has no security interest in or pledge of any of Tenant’s property or any of its rights in the Lease (or derived therefrom other than any residual rights that the Town has to such assets commencing upon the expiration or earlier termination of the Lease or New Lease, as applicable). Tenant acknowledges that the interest of the Town under the Lease has been assigned to Fee Mortgagee solely as security for the purposes specified in said assignments, and Fee Mortgagee shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, except (i) as provided herein, or (ii) upon Fee Mortgagee exercising control over the Town’s interest in the Lease. Tenant further agrees that only upon receipt of a written notice from Fee Mortgagee of an event of default by the Town under the Fee Loan, Tenant will thereafter, if requested by Fee Mortgagee (and after Tenant notifies the Town of the request received from Fee Mortgagee), pay rent to Fee Mortgagee in accordance with the terms of the Lease. Town shall have no claim against Tenant for any amounts paid to Fee Mortgagee pursuant to any such notice. Fee Mortgagee hereby agrees that it will only send such a notice if in its good faith judgment an event of default has occurred and has not been cured. To the extent Fee Mortgagee previously sent a notice to Tenant of such event of a default requesting payment of rent be paid to Fee Mortgagee, then at such time as such event of default has been cured and the cure accepted by Fee Mortgagee, Fee Mortgagee shall notify the Tenant in writing to again pay Sublessor such rents. Notwithstanding the foregoing provisions or any other provision herein to the contrary, Tenant shall be under no obligation to pay any rent or perform any other obligation set forth in the Lease to Fee Mortgagee unless and until Tenant receives written notice

from Fee Mortgagee that the Town is in default under the Fee Loan and Fee Mortgagee is entitled to the rent under the Lease.

4. Tenant shall have the right to mortgage, assign, pledge and hypothecate its interest in the Lease to any Lender as security for Loan(s). In connection with any financing obtained by Tenant (regardless of whether structured as mortgage financing, mezzanine financing or another type of financing), Fee Mortgagee shall execute such documents Lender may reasonably request in order to facilitate such financing (“**Future Non-Disturbance Agreement**”). For the avoidance of doubt, Fee Mortgagee’s and the Town’s agreement to provide the Non-Disturbance Agreement contemplated in the Lease as referenced herein shall only be for the benefit of first lien lenders with respect to Tenant’s interests in the Lease or first lien lenders with respect to the ownership interests in Tenant and to the extent that there are any other subordinate sub-leasehold mortgages and/or subordinate liens given by Tenant as for any interest in Tenant, Fee Mortgagee and the Town shall have no obligation to provide the future Non-Disturbance Agreement to such parties.

5. Within a reasonable time after Tenant obtains a loan from Lender, Tenant shall notify the Town and Fee Mortgagee in writing (“**Lender Notice**”) of the following, to wit: (i) the name and address and other contact information of the Lender, and (ii) confirming to the Town and Fee Mortgagee that Tenant has executed and delivered to Lender the Leasehold Mortgage, if applicable, or security interest in the ownership interests in Tenant given to Lender, if applicable. Further, notwithstanding anything to the contrary contained herein, upon delivery of the Lender Notice, Lender shall be deemed to be bound by this Agreement, whereupon Lender shall be deemed to be a “Leasehold Mortgagee” and entitled to all of the protections afforded a “Leasehold Mortgagee” thereunder, as provided in this Agreement. The delivery of Lender’s Notice shall be deemed to be an agreement by such Lender of the obligations of Lender set forth herein.

6. Tenant and any Lender (to the extent it has provided a Lender Notice) shall provide Fee Mortgagee, in the manner provided for herein for giving of notices, a copy of each notice of default given to the Town in connection with the Lease, and Fee Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied any default of the Town under the Lease, so long as such remedy is completed within any notice or grace period provided under the Lease and prior to Tenant electing to terminate the Lease due to any non-monetary default. In connection with any non-monetary defaults, the Tenant hereby agrees that, provided Fee Mortgagee has commenced to cure such non-monetary default and is proceeding with commercially reasonable diligence to complete such cure, Fee Mortgagee shall have an additional period of time as may be reasonable to enable Fee Mortgagee to remedy, or cause to be remedied, any such non-monetary default in addition to the period given to the Town for remedying, or causing to be remedied, such non-monetary default, and Tenant shall accept performance by Fee Mortgagee as performance by the Town.

7. To the extent Fee Mortgagee or any other party (each a “**New Lessor**”) shall acquire the interest of the Town under the Lease, the following shall be binding upon New Lessor:

(i) So long as Tenant recognizes the New Lessor and Tenant is not in default under the Lease (beyond any period given to Tenant by the terms of the Lease to cure such default) and is paying rent to the New Lessor under the Lease, New Lessor shall not, whether in the exercise of any of its rights under the Lease or otherwise, disturb Tenant's possession of the

Premises or deprive Tenant of any right or privilege granted to or inuring to the benefit of Tenant under the Lease; nor shall Tenant be named as a party in any foreclosure proceeding except to the extent required by law.

(ii) New Lessor shall recognize and keep the Lease as a direct sublease between Tenant and New Lessor, without the necessity of executing a new lease. In such event, New Lessor shall succeed to the interest of the Town under the Lease, the Tenant shall attorn (subject to the terms of this Agreement) to the New Lessor, in each case to be effective and self-operative without the execution of any further instruments.

(iii) Notwithstanding the foregoing, upon the request of either New Lessor and/or Tenant, the other Party shall promptly execute and deliver a commercially reasonable instrument in recordable form (an "**Attornment and Recognition Agreement**") that (i) as to the Lease, evidences the foregoing attornment by Tenant to New Lessor, and (ii) evidences the recognition of the Lease as a direct Lease between New Lessor and Tenant.

(iv) At the option of the New Lessor (which may be exercised at any time after an Attornment and Recognition Agreement is executed by New Lessor and Tenant), the New Lessor may enter into a new lease with the Tenant for the Premises (a "**New Lease**"). The New Lease shall contain the exact same terms and conditions contained in the Lease, whereupon the New Lease shall replace the Lease and be deemed a replacement Lease between Tenant and the New Lessor, and a new Non-Disturbance Agreement (similar in form to this Agreement as to such New Lease) shall be executed by New Lessor and Tenant.

(v) After New Lessor, or its successors and assigns, shall succeed to the interest of the Town under the Lease (or enter into a New Lease), New Lessor and Tenant, or their respective successors and assigns, shall be bound to each other under all of the terms, covenants and conditions of each of the Lease or New Lease, if applicable, and Tenant and New Lessor shall, from and after such succession by New Lessor to the interest of the Town under each of the Lease (or the entry of New Lease, if applicable) shall each have the same remedies against each other, or their respective successors and assigns, for the breach of any agreement or covenant or duty contained in each of the Lease or New Lease, if applicable, might have had against the other under the Lease as if such parties had been the original lessor or lessee (as applicable) under the Lease, provided, however, notwithstanding anything in the Lease (or New Lease, if applicable) or in this Agreement to the contrary, New Lessor, its successors and assigns, shall not be:

a. bound by any rent, additional rent or other amounts which Tenant might have paid for more than the current month except the most recent payment of rent paid by Tenant as required under the Lease, or to the extent such money was actually received by New Lessor; or

b. accountable for any money deposited with Lessor for any matter, including, capital improvement reserves, except to the extent such money was actually received by New Lessor; or

c. liable for any indemnities of the Town under the Lease for any period prior to New Lessor becoming the lessor under the Lease or New Lease; or

d. liable for any act or omission of the Town (or its members, officers, managers, employees, contractors, or agents) that occurred prior to such party becoming the New Lessor (and additionally, Tenant agrees that any such act or omission is not a defense or excuse to Tenant's continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease; or

e. liable for the Town's breach of any agreement or covenant or duty contained in the Lease which occurred prior to the date the New Lessor succeeded to the interest of the Town (and additionally, Tenant agrees that no such breach is a defense or excuse to its continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease.

Except as provided in this Agreement, Lessor and Tenant shall have their respective rights or remedies available to it under the Lease (or comparable provisions in the New Lease).

(vi) New Lessor shall, in the manner provided for herein for giving of notices, provide promptly to the Lender (to the extent it has provided a Lender Notice) a copy of each notice of default given by New Lessor to the Tenant in connection with the Lease or New Lease, if applicable.

(vii) Lender shall have the right, but not an obligation, to remedy or cause to be remedied any default of Tenant so long as such remedy is completed within any notice or grace period provided under the Lease or New Lease, if applicable, to Tenant as extended if Lender is diligently pursuing the completion of a non-monetary default of Tenant, as such extension is permitted under the Lease or New Lease, if applicable, and New Lessor shall accept performance by the Lender as performance by the Tenant under the Lease or New Lease, if applicable. Provided Lender satisfies the requirements of this Paragraph 7, any defaults by Tenant of any covenants and agreements which are not within the reasonable power of Lender or any nominee to perform shall not be enforced by New Lessor against Lender (but may be enforced against the Tenant), provided the same shall not be deemed to be a waiver of such obligations from and after the date Lender or its nominee acquires Tenant's interest in the Lease or New Lease, if applicable, or the interest in the Tenant, as applicable.

(viii) In case of a default by the Tenant under the Lease or New Lease, if applicable, beyond any applicable notice and cure period, other than a default in the payment of money and under such circumstances New Lessor having the right to terminate after all cure periods, if any, have expired, the New Lessor shall take no action to effect a termination of the Lease or New Lease, if applicable, by service of a notice or otherwise, without first giving Lender (to the extent it has provided a Lender Notice) a commercially reasonable time within which to either:

a. obtain possession of the Premises and the Tenant's improvements located thereon ("**Improvements**") (including possession by a receiver) and to cure such default in case of a default which is within the power of the Lender to cure, it being understood that the payment of money is within the Lender's power to cure, when such Lender has obtained possession of the Premises and the Improvements; or

b. initiate and complete foreclosure proceedings or otherwise acquire Tenant's leasehold interest under the Lease (or New Lease, as applicable), provided the New Lessor may seek to intervene and Lender consents to such intervention in said foreclosure proceedings and obtain an order authorizing the Lender to commence to cure such default as described by New Lessor and, if such order is obtained, Lender shall have a reasonable time thereafter to proceed diligently to cure such non-monetary defaults within its control to cure and to cure all monetary defaults and the New Lessor will not need to wait until the foreclosure proceedings are concluded. Upon issuance of such orders in the judicial proceedings and if Lender fails to diligently proceed to cure such default, New Lessor has the right to enter the Premises and cure such default, the cost and expenses of which shall be added to the Lease or New Lease, if applicable, as additional rent. Lender shall diligently proceed with the appointment of a receiver to operate and maintain the Premises under the Lease or New Lease, if applicable.

The provisions of Paragraph 7(viii) above are conditioned on the following: Lender, within the forty-five (45) days of receipt of a notice of default under the Lease or New Lease, if applicable, shall (i) notify New Lessor of its election to proceed with due diligence to promptly acquire possession of the Premises and any Improvements or to foreclose its Leasehold Mortgage or otherwise to extinguish Tenant's interest in the Lease or New Lease, if applicable; and (ii) deliver to New Lessor an instrument in writing duly executed and acknowledged, whereby the Lender agrees that (x) during the period Lender is enforcing its remedies and/or during the pendency of any foreclosure or other proceeding and until the interest of Tenant in the Lease or New Lease, if applicable, shall terminate, as the case may be, it will pay or cause to be paid to New Lessor (on behalf of Tenant) all monetary obligations of Tenant including rent (based on gross revenue Lender is able to collect), payment of taxes and insurance then due and from time to time becoming due under the Lease or New Lease, if applicable, which is to be remitted to New Lessor giving credit, however, for any net income actually collected by New Lessor (as applicable) in connection with the Premises, and (y) if delivery of possession of the Premises and the Improvements shall be made to Lender or its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all covenants and agreements contained in the Lease or New Lease, if applicable, on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid except such covenants and agreements which are not within the reasonable power of the Lender or such nominee to perform but the payment of rent (based on gross revenue Lender is able to collect), taxes and insurance shall be deemed activity within the power of the Lender or its nominee to perform. Upon such extinguishment of Tenant's interest in the Lease or New Lease, if applicable, and such performance by such holder or such nominee, or by any purchaser of the Tenant's interest in the Lease pursuant to any foreclosure proceedings, New Lessor's rights to serve notice of election to end the term of the Lease or New Lease, if applicable, based on any non-monetary default which is not within the

power of such holder or nominee or such purchaser to perform, shall be deemed to be and shall be waived. If prior to any sale pursuant to any proceedings brought in foreclosure of the Loan(s), or if, prior to the date on which Tenant's interest in the Lease or New Lease, if applicable, shall otherwise be extinguished, the default in respect of which New Lessor shall have given notice shall have been remedied and possession of the Premises and the Improvements restored to Tenant, the obligations of the Lender pursuant to the instrument referred to in clause (x) of this paragraph shall be null and void (subject to a new right to cure for other defaults) and of no further force and effect. Nothing herein contained shall affect the right of New Lessor, upon the subsequent occurrence of any default by Tenant, to exercise any right or remedy reserved in the Lease or New Lease, if applicable, to New Lessor, subject to the rights of the Lender pursuant to this Agreement with respect to such default. Notwithstanding anything contained in this Agreement to the contrary, New Lessor shall not be required to waive monetary defaults such as payment of rent, taxes, insurance and other financial obligations under the Lease or New Lease, if applicable, giving credit, however, for any net income actually collected by New Lessor in connection with the Premises. Further, both parties agree payment of rent (based on gross rent Lender is able to collect), and payment of taxes, insurance and other monetary obligations shall never be deemed "not within the reasonable power of the Lender or such nominee to perform" or a default not susceptible of being cured and upon Lender or its designee becoming the Tenant, such party shall perform the deferred maintenance and other obligations within its reasonable control to the extent such matters could not be cured previously.

(ix) Upon (a) a foreclosure or deed in lieu of foreclosure, whereby the Tenant's interest in the Lease or New Lease, if applicable, is transferred to the Lender or foreclosure of ownership interests in Tenant or a transfer in lieu of foreclosure of ownership interests in Tenant, or its first assignee or (b) if such Lender is unable (despite commercially reasonable efforts to do so) to perform the cure within its cure period as provided in Section 7 (xi) and the Lease or New Lease, if applicable, is terminated or (c) if New Lessor shall give notice thereof to the Lender and in either of such cases, upon written request by the Lender given to New Lessor within thirty (30) days after such foreclosure (as provided in Section 7(xii)(a)) or the notice from New Lessor to the Lender of the termination of the Lease or New Lease, if applicable (as provided in Section 7(xii)(b)) to enter a "New Lease" (as hereinafter defined), New Lessor shall enter into and deliver a new lease ("**New Lease**") of the Premises with the Lender or its designee for the remainder of the term of the Lease or New Lease, if applicable, upon the exact same terms and conditions as contained in the Lease or New Lease, if applicable, including all right to the extensions thereof and dated as of the date of termination of the Lease or New Lease, if applicable, and convey to the Lender (or its designee) by quit claim bill of sale, a term of years in and to the Improvements, reserving to New Lessor the reversion of title to the Improvements upon the termination of the New Lease. The estate of the Lender (or its designee) as lessee under the New Lease shall have priority equal to the estate of the Tenant under the Lease or New Lease, if applicable (that is, there shall be no charge, lien or burden upon the Premises prior to or superior to the estate granted by such New Lease which was not prior to or superior to the estate of the Tenant under the Lease or New Lease, if applicable, as of the date immediately preceding the date the Lease or New Lease, if applicable, went in default. The quit claim bill of sale to the Improvements shall recite that the grantee holds title to the Improvements only so long as the New Lease shall continue in full force and effect, that upon termination of the New Lease, title to the Improvements shall revert to New Lessor automatically without payment. Nothing herein contained shall be deemed to impose any

obligation upon New Lessor or to cause the delivery of physical possession of the Premises and the Improvements to the Lender or its designee or to disavow any recognition of the Lease or New Lease, if applicable, or the rights of the Tenant pursuant to the terms of the Lease or New Lease, if applicable. The Lender or its designee shall pay all reasonable expenses, including reasonable attorneys' fees, incident to the execution and delivery of such New Lease and quit claim bill of sale to the extent requested by the Lender. If there be more than one (1) Leasehold Mortgage, the right to request and obtain a New Lease shall be limited solely to the Lender having the highest priority lien. New Lessor reserves the right to require a written legal opinion, at Lender's expense, as to whether or not such Leasehold Mortgage is a first lien on the Tenant's rights under the Lease or New Lease, if applicable.

However, if the Leasehold Mortgage is foreclosed, the purchaser who shall have acquired the Tenant's leasehold estate at the foreclosure sale shall execute and deliver such evidence of acquiring such leasehold estate to New Lessor. If Lender is the purchaser, it may assign its interest in the Lease or New Lease, if applicable, to any person, firm, corporation or entity designated by it who satisfies the minimum standard as expressly specified in the Lease or New Lease, if applicable, and such assignee shall execute and deliver such assignment to New Lessor in form reasonably acceptable to New Lessor, whereupon the Lender shall have no liability or obligation thereunder.

8. (a) Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable) the Town and Tenant, shall not consent to or accept any voluntary cancellation, termination or surrender of the Lease (other than to enforce a default thereunder not cured within the applicable cure period). Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable), which consent shall not be unreasonably withheld, conditioned or delayed, the Town and Tenant shall not, in any material respect, modify or amend the Lease or New Lease, if applicable, which materially changes the term, the rent, or otherwise materially increases the obligations of the Town or material decreases the obligations of Tenant under the Lease or New Lease, if applicable (a "**Lease Modification**"). In the event the Town sends its request for approval of a Lease Modification to Fee Mortgagee as a "Time Sensitive Request of Lender", then the Lender shall be deemed to have approved such request if the Fee Mortgagee does not disapprove same and specify the basis for such disapproval within twenty (20) days of request.

(b) Without the prior written consent of Lender (to the extent it has provided a Lender Notice and while its lien encumbers any Tenant interest in the Lease or New Lease, if applicable), the Town and Tenant shall not (i) consent to or accept any violation, cancellation, termination or surrender of the Lease or New Lease, if applicable (other than to enforce a default thereunder not cured within the applicable cure period (but subject to the terms hereof)), or (ii) modify or amend the Lease or New Lease, if applicable, in any material manner which changes the term, the rent, or otherwise materially increases the obligations of Tenant or material decreases the obligations of the Town or the rights of Tenant under the Lease or New Lease, if applicable (in each case, a "**Material Lease Modification**"). In the event the Town or Tenant sends a request to Lender for approval of a Material Lease Modification, any such consent of Lender shall not be

unreasonably withheld and shall be subject to the terms and provisions attached hereto as Exhibit A.

9. The Town and New Lessor agree that the restrictions on "Assignment" (as defined in the Lease or New Lease, if applicable) do not apply to either (a) an assignment of the Leasehold interest of Tenant as it relates to Lender (to the extent it has provided a Lender Notice) pursuant to the Leasehold Mortgage or the foreclosure of the Leasehold Mortgage or assignment in lieu of the foreclosure of the Leasehold Mortgage or (b) a pledge of ownership interests in the Tenant as it relates to Lender by its owner or the foreclosure on the ownership interests of Tenant or the assignment in lieu of the foreclosure of ownership interests in the Tenant, provided however, any subsequent assignment by Lender to a third party shall be subject to compliance with the minimum standards relating to an assignee as specified in the Lease or New Lease, if applicable.

10. The parties acknowledge that any Loan(s) obtained by Tenant are leasehold security interests on the Tenant's interest in the Premises and do not encumber or subordinate the fee simple title of the Town, the leasehold interest of Lessor, or any lien and/or leasehold interest held by Fee Mortgagee.

11. Any notice required or permitted to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified mail, postage prepaid, return receipt requested. Such written notice shall be addressed as follows:

As to Fee Mortgagee:

With a copy to:

As to Town:

With a copy to:

As to Lender:

The name and address of the Lender and its
representatives as set forth in the Lender Notice

As to Tenant:

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid and shall be deemed delivered three (3) business days after being properly mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, notices, requests or demands or other communications referred to in this Agreement may be sent by email (except that requests for Material Lease Modification approvals whereby the provisions of Exhibit A would be applicable must always be sent by certified mail return receipt requested or a nationally recognized delivery service such as Federal Express in addition to email) or by nationally recognized delivery service such as Federal Express, but shall only be deemed to have been given when received

12. This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by all Parties to this Agreement.

13. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed an original and all of which shall be deemed one and the same instrument. Facsimile transmission signatures of this Agreement shall be deemed to be original signatures.

14. This Agreement is governed by Florida law and Palm Beach County, Florida is the agreed upon venue.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signature Pages to Follow]

WITNESSES:

LESSOR:

Town of Lake Park Florida

 Print Name: _____

By: _____

Name: _____

Title: _____

 Print Name: _____

Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

 Notary Public

 Typed, print d or stamped name of Notary Public

My Commission Expires:

WITNESSES:

TENANT:

 Print Name: _____

By: _____

Name: _____

Title: _____

 Print Name: _____

Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

 Notary Public

 Typed, print d or stamped name of Notary Public

My Commission Expires:

LENDER:

Date:

472

FEE MORTGAGEE:

Date:

STATE OF _____)
) SS:
COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

Notary Public

Typed, print d or stamped name of Notary Public

My Commission Expires:

Exhibit A

If Tenant makes a written request of Lender in accordance with the terms of this Agreement to make a material modification or amendment to the Lease, accompanied by all such background information and explanations as may be reasonably necessary for Lender to determine whether to consent to or approve the request, and does not receive a consent, approval or rejection from Lender within five (5) business days after Lender's receipt of such request, then Tenant may provide Lender with a second written notice of any such request, with a copy of such first request, and if such second written notice includes, printed in capital letters of boldface type and at least 12 point font, a legend substantially to the following effect:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS (OR LONGER PERIOD AS PROVIDED IN THAT CERTAIN NON-DISTURBANCE AGREEMENT DATED AS OF _____) FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED CONSENT OR APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE ADDRESSOR.”

and if the foregoing legend is included by the Tenant in the second written request to Lender, such request shall be deemed to have approved or consented to the item for which Tenant sought Lender's consent or approval for all purposes hereunder unless Lender denies the such request within ten (10) calendar days of Lender's receipt of such second written request; provided, however, that if Lender in writing notifies Tenant (including the basis for the need for additional time) within such ten (10) calendar day period that the nature of the request is such that more than ten (10) calendar days are required in order for the Lender to properly assess the request and respond to Tenant (including without limitation, as a result of loan approval authority for the requested change being a prerequisite to Lender's and/or any Loan participant's response to the request), then such period shall be extended for up to an additional twenty (20) calendar days (i.e. a total of thirty (30) calendar days after Lender's receipt of the second written request) for Lender and/or any Loan participant to properly assess the request and respond to Tenant so long as Lender and/or such Loan participant(s) have commenced their assessment within such ten (10) calendar days period and thereafter diligently conducts their review and determination of whether or not to approve or consent to such request.



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Agenda Item No.

Agenda Title: Resolution Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Marina, LLC for the Public Marina Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina

[] SPECIAL PRESENTATION/REPORTS [] CONSENT AGENDA
 [] BOARD APPOINTMENT [] OLD BUSINESS
 [] PUBLIC HEARING ORDINANCE ON FIRST READING
 [x] NEW BUSINESS
 [] OTHER: _____

Approved by Town Manager **Bambi McKibbon-Turner**
 Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake
 Park, ou=Assistant Town Manager/Human Resources
 Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 10:42:56 -04'00'

Bambi McKibbon-Turner, Assistant Town Manager/Human Resources Director

Name/Title

Originating Department: Town Manager	Costs: \$ 0.00 Funding Source: Acct. # [] Finance _____	<u>Attachment:</u> Resolution and Copy of the Ground Lease between the Town of Lake Park and FD P3 LP Marina, LLC for the Public Marina Component
Advertised: Date: _____ Paper: _____ [x] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	<u>Yes I have notified everyone: BMT</u> OR Not applicable in this case ____ Please initial one.

Summary Explanation/Background:

At its August 2, 2023 meeting, the Town Commission approved the execution of the P3 Comprehensive Agreement (the “Agreement”) between the Town of Lake Park and Forest Development P3 LPM, LLC (collectively “the parties”) for the enhancement of the Lake Park Harbor Marina.

Pursuant to Article 4 of the Agreement, the parties are required to enter into four separate ground leases for components of the enhancement project (i.e., the Hotel Component, the Boat Storage Component, the Public Marina Component, and the Marina Restaurant Component). The purpose of this agenda item is to approve and authorize the Mayor to execute the ground lease for the Public Marina Component.

The Public Marina Component ground lease is attached as an exhibit to the attached Resolution.

Staff recommends approval.

Recommended Motion: I move to approve Resolution _____.

RESOLUTION 34-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A GROUND LEASE WITH FD P3 LP MARINA, LLC FOR THE PUBLIC MARINA COMPONENT OF THE QUALIFYING PROJECT FOR THE RE-DEVELOPMENT OF THE LAKE PARK HARBOR MARINA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes and

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the "Developer"), is developing a Qualifying Project involving the redevelopment of six (6) parcels of land owned by the Town (the "**Land**"), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, all of which are part of the Lake Park Harbor Marina (the "**Marina**"); and

WHEREAS, in accordance with Fla. Stat. §255.065, the Town and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (the "Comprehensive Agreement"), memorializing their respective rights and obligations with respect to the development of the Qualifying Project; and

WHEREAS, pursuant to the Comprehensive Agreement, the Town and Developer have agreed that Town and four (4) special purpose entities formed by Developer will enter into four (4) separate ground leases for portions of the Marina, known as the "Hotel

Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, in accordance with the Comprehensive Agreement, a 99 year Ground Lease (“Lease”) for the Public Marina Component has been negotiated between FD P3 LP Marina, LLC and the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS

Section 1. The whereas clauses are hereby incorporated herein.

Section 2. The Town Commission hereby approves a Ground Lease for the Public Marina Component Ground Lease with FD P3 LP Marina, LLC a copy of which is attached hereto and incorporated herein as Exhibit 1.

Section 3. The mayor is hereby authorized and directed to execute the Public Marina Component Ground Lease on behalf of the Town.

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

#5480349 v1 26508-00032

GROUND LEASE
(Public Marina Component)

THIS GROUND LEASE (this “**Lease**”), dated as of _____, 2024 (the “**Effective Date**”), is entered into by and between the **TOWN OF LAKE PARK, FLORIDA**, a Florida municipal corporation (“**Landlord**”), and **FD P3 LP MARINA, LLC**, a Florida limited liability company (“**Tenant**”) (collectively, the “**Parties**” and individually, a “**Party**”).

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the “**Developer**”), an affiliate of Tenant, submitted to Landlord an unsolicited proposal for a Qualifying Project (the “**Proposal for Redevelopment**”) involving the redevelopment of six (6) parcels of land owned by Landlord (the “**Land**”), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, and commonly known as Lake Park Harbor Marina (the “**Marina**”); and

WHEREAS, the Town Commission selected the Developer’s Proposal for Redevelopment; and

WHEREAS, in accordance with said §255.065, Landlord and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (as the same may be amended or supplemented, collectively, the “**Comprehensive Agreement**”), memorializing their respective rights and obligations with respect to the redevelopment of the Marina; and

WHEREAS, all capitalized terms used but not otherwise defined in this Lease shall have the respective meanings ascribed to them in the Comprehensive Agreement; and

WHEREAS, pursuant to the Comprehensive Agreement, Landlord and Developer have agreed that Landlord and four (4) special purpose entities formed by Developer shall enter into four (4) separate ground leases for portions of the Marina, on which will be developed the “Hotel Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, the Public Marina Component will include, among other things, wet slips, boat ramp, outdoor showers, public restrooms, a ships store, vehicle and boat trailer parking, fueling and pump out stations, floating docks, and public space; and

WHEREAS, in accordance with the Comprehensive Agreement, Landlord and Tenant desire to enter into this Lease to document Tenant’s lease from Landlord of a portion of the Marina hereinafter described on which will be developed the Public Marina Component, all in accordance with the terms and conditions hereinafter set out.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **DEMISE.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all of the area shown on the plan attached hereto as **Exhibit A** and made a part hereof (the “**Site Plan**”), and more particularly described on **Exhibit B**, attached hereto and made a part hereof, together with all appurtenant easements and rights thereto, as same may be amended by Tenant as provided in Section 17 of this Lease (collectively, the “**Premises**”). Landlord and Tenant hereby acknowledge and agree that this Lease shall be subject to the terms, conditions and provisions of the Comprehensive Agreement only to the extent the same pertain to the Public Marina Component and that only a default under the terms of the Comprehensive Agreement that pertain to the Public Marina Component shall constitute a default under this Lease.

2. **TERM.** The term of this Lease (the “**Term**”) shall be ninety-nine (99) years, commencing on the later of (i) the Effective Date; (ii) the earlier of (A) the date of the modification or termination of the Deed Restrictions and Reverter Clauses to Landlord’s and Developer’s reasonable satisfaction, and (B) the date that Developer notifies Landlord in writing that it intends to proceed with the Project even if the Deed Restrictions and Reverter Clauses are not fully terminated; (iii) August 2, 2025 (the “**Commencement Date**”). Notwithstanding the foregoing, in the event that the Deed Restrictions and Reverter Clauses have not been terminated or modified to the Developer’s reasonable satisfaction and the Developer has not notified Landlord in writing that it intends to proceed with the Project despite the fact that the Deed Restrictions and Reverter Clauses have not been fully terminated, Tenant shall have the right to terminate this Lease by written notice to Landlord on or before August 2, 2025.

3. **LEASE PAYMENTS.** As consideration for Landlord’s execution of this Lease with Tenant, Tenant shall make payments to Landlord in accordance with the schedule attached hereto as **Exhibit C** (the “**Lease Payments**”). During the Term, Tenant shall also be responsible for all real estate taxes (including ad valorem taxes and non-ad valorem assessments) assessed with respect to the Premises and for all expenses incurred in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises. In addition, Tenant shall pay or cause the Developer to pay the portion of the P3 Assessment Fee in the total amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) and the Building Permit Fee (as such terms are defined in the Comprehensive Agreement) applicable to the Public Marina Component, which payments shall be made on or before August 2, 2024 in accordance with the Comprehensive Agreement. Except as otherwise expressly set forth in this Lease, Landlord shall not be responsible for any costs, expenses, or charges of any kind or nature respecting the Premises and Landlord shall not be required to render any services of any kind to Tenant or to the Premises. Landlord shall receive the Lease Payments free and clear of any and all impositions, taxes, liens, charges, deductions or expenses of any nature whatsoever in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises.

4. **IMPROVEMENTS.** Tenant hereby agrees to develop the Public Marina Component on the Premises in accordance with the terms and conditions of the Comprehensive Agreement, to the extent such terms and conditions apply to the Public Marina Component, and the Site Plan attached hereto and made a part hereof as **Schedule 4**, as same may be amended from time to time, as approved by applicable governmental authorities including, but not limited to, outdoor showers, public restrooms, parking of vehicles and boats, marina dock use and boat latch areas. Tenant covenants that the construction of all improvements at the Premises (the

“Improvements”) shall be at Tenant’s sole cost and expense and in accordance with all applicable legal requirements. Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant. Tenant shall notify any contractor engaged in the construction of the Improvements of the foregoing, and the knowing or willful failure of the Tenant to provide such notice to the contractor(s) shall render the contract between the Tenant and the contractor voidable at the option of the contractor. In the event any such lien is filed against the fee simple interest in the Premises as a result of any construction thereon by Tenant or on Tenant’s behalf, then and in that event, Tenant shall cause said lien to be discharged or bonded over within thirty (30) days of Tenant’s actual knowledge of same. The failure to do so shall, at the option of Landlord, constitute a breach of this Lease. If Tenant fails to have such lien or claim for lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, shall have the right to pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord’s reasonable expenses and attorneys’ fees.

Subject to the terms and conditions of this Lease, until the expiration or earlier termination of this Lease, (a) all Improvements shall be and remain the property of Tenant, and (b) Tenant shall have the rights and benefits of ownership of the Improvements, including, without limitation the right to claim depreciation of the Improvements for tax purposes.

5. **USE OF PREMISES.** It is expressly agreed that the Premises may be used during the Term only for any purposes permitted pursuant to the Comprehensive Agreement or as may permitted by the applicable governmental authority and may not use the Premises for any purpose in violation of the Deed Restrictions and Reverter Clauses to the extent the same have not been amended or terminated of record. It is the obligation of the Developer to work out alternative locations that would provide for seamless operation of current users in that location during construction. Tenant, its agents, employees, customers, and invitees shall have free and unobstructed right to use the Premises for such purposes. Tenant shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the Improvements, or any activity or condition on or at the Premises. Tenant shall have access to the Premises twenty-four (24) hours per day, 365 days per year. Tenant shall have the right to place signs at the Premises provided such signs comply with the local ordinances and regulations. Upon the expiration of the Term, upon Landlord’s request, Tenant shall remove all signage and shall restore and repair any damage caused by the installation or removal of such signs.

6. **MAINTENANCE AND REPAIR.** Throughout the Term, Tenant, at its sole cost and expense, shall (a) keep and maintain the Premises including all Improvements of every kind thereon and appurtenances thereto, in good order and condition, and (b) make such repairs, replacements and renewals (collectively, **“Repairs”**) to the Premises as may be necessary or appropriate to keep and maintain the Premises in good order and condition, whether such Repairs are ordinary or extraordinary, foreseen or unforeseen. Without limiting the generality of the

foregoing, Tenant shall keep and maintain all portions of the Premises and all driveways, sidewalks, parking areas, curbs and access ways adjoining the Premises in a clean and orderly condition, and shall keep and maintain all open areas of the Premises in a neat and orderly condition and perform all necessary landscaping work. All Repairs shall be promptly made with materials and equipment, which are at least equal in quality to those in place. Landlord shall not be obligated to make any repairs or replacements of any kind, nature, or description, whatsoever, to the Premises or the Improvements thereon.

7. INDEMNIFICATION.

(a) Subject to the subrogation provisions of this Lease, Tenant agrees to indemnify and hold Landlord and its former and current elected and appointed officials, agents, consultants and employees (collectively, “**Landlord Parties**”) harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys’ fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, any Landlord Party arising out of, from, or in any way connected with or arising from the negligence, recklessness, or intentional wrongful misconduct of Tenant in the performance of its obligations under this Lease. Notwithstanding the foregoing, Tenant shall not be required to indemnify any Landlord Party with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence and/or willful misconduct of such Landlord Party. To the extent this indemnification clause or any other indemnification clause in this Lease is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties’ intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

(b) Tenant shall not have any obligation to indemnify or defend the Landlord Parties against any claims brought against any Landlord Party by any third party challenging: (i) Landlord’s legal authority to lease all or any portion of the Premises; (ii) the Town Commission’s judgment in leasing all or any portion of the Premises; or (iii) Landlord’s decision to enter into this Lease or the terms and provisions of this Lease, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. Provided however, that if any third party brings any claims against Landlord and Tenant, Tenant shall have the responsibility to defend the allegations against it. The provisions of this Section shall survive the expiration or earlier termination of this Lease. Any tort liability to which Landlord is exposed under this Lease shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section § 768.28, Florida Statutes, as it may be amended. Landlord expressly does not waive any of its rights and immunities under § 768.25.

8. TAXES. During the Term, Tenant shall assume full responsibility for and shall pay all taxes and assessments that accrue to the Premises or to the Improvements thereon, including sales and property taxes (including ad valorem taxes and non-ad valorem assessments). Tenant shall obtain, if available, a separate tax billing or assessment for the Premises, and Tenant shall pay the ad valorem real property taxes attributable to the Premises only. If a separate billing or assessment for the Premises is not available, Tenant shall pay its pro rata share of the cost incurred by Landlord for real property taxes upon the Project. Tenant agrees to reimburse Landlord within thirty (30) days after receipt of an itemized statement showing the pro rata amount due by Tenant.

In no event shall Tenant be obligated to pay any of Landlord's administrative fees relating to taxes nor shall Tenant be obligated to pay any interest or penalties imposed for late payment or otherwise unless caused by Tenant. Any real property taxes shall be apportioned so that Tenant shall pay only that portion of real property taxes or installments thereof as fall within the Term. Tenant shall not be obligated to pay any income tax, excise tax or other similar tax or charge, or inheritance, franchise, capital levy transfer, estate, succession or other similar tax or charge that may be payable by or chargeable to Landlord under any present or future law of the United States or the state in which the Premises are located or imposed by any political or taxing subdivision thereof. Tenant shall have the right, by appropriate proceedings, to protest or contest any assessment or reassessment for real property taxes, or any special assessment, or the validity of either, or of any change in assessments or the tax rate and Landlord agrees to reasonably cooperate with Tenant in any such protest or contest. If Landlord is unwilling to pursue such protest or contest, then Tenant may do so in Landlord's name at Tenant's expense. Landlord agrees not to initiate or endorse any action or application which would increase Tenant's monetary obligations under this Section.

9. INSURANCE; WAIVER OF SUBROGATION. During the Term, Tenant shall comply with all of the insurance requirements imposed upon the Developer pursuant to the Comprehensive Agreement only to the extent the same are applicable to the Public Marina Component.

Landlord and Tenant, for themselves and their respective insurers, hereby release each other of and from any and all claims, demands, actions and causes of action, (including, without limitation, subrogation claims), for loss or damage to their respective property located within or upon, or constituting a part of the Premises, even if the loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies or, in the case of Landlord, if Landlord elects to self-insure. Landlord and Tenant shall each cause each insurance policy obtained by it to provide that each insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy. The foregoing waiver of subrogation shall also apply in the event that Landlord elects to self-insure.

10. UTILITIES. During the Term, Tenant, at its sole cost and expense, shall take such action as may be necessary to procure the utility services required for Tenant's operation of the

Premises, including, without limitation, making arrangements to extend and connect utility lines to and within the Premises. Tenant shall pay all charges for utility services used on the Premises during the Term. At Landlord's request from time to time (but no more frequently than twice in any calendar year), Tenant shall deliver to Landlord receipts or other evidence satisfactory to Landlord indicating the timely payment of utility expenses. Notwithstanding the foregoing obligation, Landlord understands and agrees that the Tenant may, at Tenant's sole discretion, charge the marina customers a license fee and/or rent including, but not limited to, a charge for reimbursement of utility expenses related to and in connection with the marina customer's use of the marina or other portions of the Premises.

Landlord makes no representation or warranty with respect to the availability or sufficiency of any utility service to the Premises. Landlord is not required to furnish any utility services to Tenant and shall not be liable for the failure of any utility services or for the untenability of the Premises or other damage or loss resulting from the unavailability, interruption, inadequacy or termination of, any utility services.

11. **DEFAULT.** The following conditions shall be considered a "**Default**" by Tenant hereunder:

(a) Tenant's failure to pay any monetary sum as provided in this Lease which continues for thirty (30) days following Tenant's receipt of notice from Landlord to that effect (a "**Monetary Default**"); and

(b) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Lease that Tenant must observe or perform, other than a Monetary Default, where the failure continues for a period of ninety (90) days after Tenant's receipt of written notice from Landlord; provided, however, that if the nature of the obligation that Tenant has failed to perform is such that more than ninety (90) are reasonably required for its cure, a Default will not occur so long as Tenant commences the cure within such ninety (90)-day period and continuously prosecutes the cure to completion (a "**Non-Monetary Default**")

If a Monetary Default occurs hereunder, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Public Marina Component), Landlord may, subject to any and all cure and notice provisions contained in this Lease, do the following: (i) commence a proceeding to terminate this Lease, or (ii) repossess the Premises, with or without terminating this Lease.

If a Non-Monetary Default occurs and is continuing, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Public Marina Component), Landlord shall have the right, in its sole election, then, or at any time thereafter while such Default shall continue to (i) remedy the same and charge Tenant for the reasonable costs thereof (including reasonable interest thereon), (ii) sue for specific performance of Tenant's obligations under this Lease; or (iii) commence a proceeding to terminate this Lease.

In the event of the occurrence of any Landlord's default as is detailed in this Lease which is not cured within sixty (60) days of Tenant's notice to Landlord, or such longer period of time as may be necessary to cure defaults which are not subject to being cured within such sixty (60) day period, Tenant shall have the right, in its sole election, then, or at any time thereafter while such Landlord's default shall continue to (i) remedy the same and charge Landlord for the costs thereof (including reasonable interest thereon), or (ii) sue for specific performance of Landlord's obligations under this Lease; or (iii) such other remedy as may be available at law or in equity.

Subject to the terms of this Section, all rights and remedies of Landlord and Tenant are cumulative, and the exercise of any one shall not be an election excluding Landlord or Tenant at any other time from exercising a different or inconsistent remedy. No waiver by Landlord or Tenant of any covenant or condition shall be deemed to imply or constitute a further waiver of the same at a later time.

12. CASUALTY.

(a) General. If at any time during the Term, any Improvements are damaged or destroyed by fire or other casualty (a "**Casualty**"), Tenant shall promptly give written notice thereof to Landlord. Tenant's obligations under this Lease shall not be affected by any Casualty except as provided in this Section. Lease Payments shall not abate during the period when the Premises are not usable by Tenant due to damage or destruction, provided, however, Tenant shall receive a credit against the Lease Payments for the relevant period in an amount equal to any insurance proceeds actually received by Landlord with respect to such period.

(b) Restoration.

(i) Upon the occurrence of a Casualty, unless this Lease is terminated pursuant to Section 12(c), Tenant shall proceed, at its sole cost and expense and with commercially reasonable diligence, to carry out or cause to be carried out any necessary demolition and debris removal and to repair, restore, replace or rebuild the Improvements as nearly as reasonably practical to their condition, quality and character immediately prior to such damage or destruction, with such changes or alterations as may be approved by Landlord or as may be required by Governmental Authority (the "**Restoration**").

(ii) All insurance proceeds shall be applied first to reimburse Tenant for the necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys' fees and disbursements) (the "**Net Insurance Proceeds**"). The balance remaining shall be paid and applied in accordance with the provisions of this Section 12(b). In the event of a Casualty resulting in damage to the Improvements of less than \$2,000,000.00, the Net Insurance Proceeds shall be paid directly to Tenant and used by Tenant to pay the costs of the Restoration of the Improvements, subject to and in accordance with the provisions of this Section 12(b) and any Leasehold Mortgage. In the event of a Casualty resulting in damage to the Improvements of \$2,000,000.00 or more, the Net Insurance Proceeds shall be paid to the Insurance Depository (as hereinafter defined) and shall be held, invested and disbursed, subject to and in accordance with the provisions of this Section 12(b) and any leasehold mortgage. The "**Insurance Depository**" shall mean an institutional lender

jointly selected by Landlord and Tenant (or if the provisions of any leasehold mortgage so provide, as selected by the holder of any Leasehold Mortgage (and may be the Leasehold Mortgagee)) to perform the functions described herein.

(iii) Subject to the terms of any Leasehold Mortgage, the Insurance Depository shall invest and reinvest the Net Insurance Proceeds in United States government securities backed by the full faith and credit of the United States government. The income from the investment of the Net Insurance Proceeds shall be part of the Net Insurance Proceeds and shall be held, invested, and disbursed in the same manner as the balance of the Net Insurance Proceeds. All reasonable costs, fees, expenses and charges of the Insurance Depository in connection with the collection, investment, administration and disbursement of the Net Insurance Proceeds shall be paid by Tenant upon demand by the Insurance Depository. In the event that Tenant shall fail to pay such costs, fees, expenses and charges upon demand, the Insurance Depository may deduct the amount thereof from the Net Insurance Proceeds.

(iv) The Insurance Depository shall disburse the Net Insurance Proceeds from time to time in accordance with requests for disbursement (each, a “**Disbursement Request**”) made by Tenant and approved by the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord. No disbursement of Net Insurance Proceeds shall be made without the prior written approval of the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord. Landlord shall be obligated to approve a Disbursement Request provided that Tenant has complied with the requirements of this Section.

(v) Subject to the other requirements of this Lease, Net Insurance Proceeds shall be disbursed periodically by the Insurance Depository as the Restoration progresses in amounts not exceeding 90% of the value of labor and materials incorporated into the work. The remaining 10% will be disbursed upon final completion of the Restoration.

(vi) If at any time during the course of the Restoration the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord, reasonably determines that the undisbursed portion of the Net Insurance Proceeds will not be sufficient to complete the Restoration, Tenant shall deposit the difference, as reasonably determined by Leasehold Mortgagee or Landlord, as applicable, with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the balance of the Net Insurance Proceeds.

(vii) All Restoration work shall be performed by Tenant in accordance with the provisions of Section 4.

(viii) Except as otherwise provided in any Leasehold Mortgage or any related loan documents, in the event that (a) Tenant shall fail to commence or complete the Restoration as required by this Section or otherwise defaults in the performance of its obligations under this Section, or (b) a default beyond any applicable notice and cure periods shall occur before or during the course of the Restoration, the Net Insurance Proceeds shall be paid to and retained by Landlord.

(ix) Upon final completion of the Restoration and compliance with the requirements for the final disbursement, any excess Net Insurance Proceeds shall be paid to Tenant.

(c) Termination by Tenant.

(i) Subject to the terms of any Leasehold Mortgage or any related loan documents, upon the occurrence of Casualty during the last thirty (30) years of the Term or if at any time during the Term the Improvements are substantially destroyed and estimated cost of the Restoration would exceed one hundred ten percent (110%) of the Maximum Required Restoration Cost (as hereinafter defined), then, instead of carrying out the resulting Restoration, Tenant, at its option, may elect to terminate this Lease by written notice to Landlord given within thirty (30) days after the Casualty or the estimated cost of such Restoration shall have been determined, whichever last occurs. After making such election, Tenant shall proceed with reasonable diligence to

(A) demolish the damaged portion of the Improvements to street grade;

(B) remove all debris from the Premises;

(C) put the Premises in good, safe, lawful, clean and orderly condition (collectively, the “**Demolition**”). The Demolition shall be carried out at Tenant’s sole cost and expense. Upon completion of the Demolition, as certified by the architect handling the Demolition and upon payment of all Lease Payments payable under this Lease through the date of such completion, this Lease shall expire and terminate with the same force and effect as though the date of such completion were the Termination Date; and

(D) provide evidence reasonably satisfactory to Landlord that all subleases have been terminated.

The term “**substantially destroyed**” shall mean and refer to that condition where the use and occupancy of substantially all the Improvements have been materially adversely affected and the estimated cost of the resulting Restoration would exceed \$2,000,000.00. The term “**Maximum Required Restoration Cost**” shall mean and refer to the total of (i) the insurance proceeds payable in respect of any loss which is the subject of the Restoration for which such determination is to be made (excluding the proceeds of any business interruption or rent loss insurance) plus the deductible amount under any applicable insurance policy or, in the case of any taking which is the subject of such Restoration, the portion of any Award (as hereinafter defined) payable in respect thereof which is available for such Restoration, *plus* (ii) any additional insurance proceeds that would have been payable in respect of any such loss if Tenant had complied with all relevant obligations of Tenant under this Lease and all relevant obligations of Tenant under all insurance policies (excluding the proceeds of any business interruption or rent loss insurance), *less* (iii) necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys’ fees and disbursements).

(d) Tenant's Obligations Not Affected. Tenant shall be obligated to carry out, or cause to be carried out, the Restoration pursuant to Section 12(b) or the Demolition pursuant to Section 12(c), as the case may be, regardless (except for Landlord's negligence or willful misconduct) of the cause of the loss which is the subject of such Restoration or Demolition, whether or not insurance shall have been in effect with respect to such loss, whether or not any proceeds from any such insurance shall be paid by the insurer, and whether or not any such insurance proceeds shall be sufficient to cover the cost of such Restoration or Demolition. Anything herein to the contrary notwithstanding, unless caused by Landlord's negligence or willful misconduct, Landlord shall not be obligated to carry out any Restoration or Demolition. Landlord shall not be liable for any inconvenience, loss of business or annoyance arising from any damage or destruction of or to the Improvements or from any Restoration or Demolition, whether carried out by Landlord or Tenant.

(e) Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease.

13. CONDEMNATION.

(a) Notice. Landlord and Tenant each agree to give the other written notice of any taking by exercise of the power of condemnation or eminent domain, whether by legal proceedings or otherwise ("**Taking**") of all or any portion of the Premises promptly after receiving notice thereof. Landlord agrees not to initiate or endorse any Taking which would materially interfere with Tenant's ability to use the Premises for the use(s) permitted under this Lease.

(b) Total Taking. In the event of a Taking (other than for temporary use) of the entire Premises or such a substantial part of the Premises that the remaining portion of the Premises, after Reconstruction, would be unsuitable for the continued use and occupancy for the uses permitted hereunder (a "**Total Taking**");

(i) this Lease shall terminate as of the date that possession is delivered to the condemning authority;

(ii) Lease Payments shall be apportioned as of the date the Lease terminates; and

(iii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys' fees and disbursements). The amount of any condemnation award or payment remaining after first reimbursing Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award or payment (including, without limitation reasonable attorneys' fees and disbursements) (the "**Net Condemnation Proceeds**") shall be apportioned between Landlord and Tenant in the manner set forth in this Section.

(c) Partial Taking. In the event of any Taking (other than for temporary use) which is not a Total Taking:

(i) this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Partial Taking;

(ii) there shall be an equitable abatement of the Lease Payments payable under this Lease based on the portion of the Premises taken;

(iii) any condemnation award or payment shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys' fees and disbursements);

(iv) Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition and character immediately prior to such Partial Taking (the "**Reconstruction**"), except for any reduction in area caused thereby. The work performed under this Section shall be performed in accordance with the provisions of Section 4;

(v) the Net Condemnation Proceeds and any sums deposited by Tenant pursuant to Section 13(c)(vi) (collectively, the "**Reconstruction Funds**") shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction, subject to substantially the same terms and conditions as are applicable to the Net Insurance Proceeds under Section 12;

(vi) Tenant shall be solely responsible for any costs of Reconstruction which are in excess of the Net Condemnation Proceeds. If, at any time, Landlord reasonably determines that the Net Condemnation Proceeds will be insufficient to pay the remaining costs of Reconstruction, Tenant shall deposit the difference with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the Net Condemnation Proceeds;

(vii) any balance of the Reconstruction Funds remaining after completion of the Reconstruction shall be apportioned between Landlord and Tenant in accordance with the provisions of this Section 13.

(d) Net Condemnation Proceeds/Reconstruction Funds.

(i) In the event of a Total Taking, the Net Condemnation Proceeds shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(ii) In the event of a Partial Taking, any Reconstruction Funds remaining after completion of the Reconstruction shall be applied first to reimburse Tenant for any sums deposited by Tenant pursuant to Section 13(c)(iv). The balance, if any, shall be apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(iii) In determining the fair market value of Landlord's interest in the Premises, due consideration shall be given to the fair market value of the Premises, as encumbered by the Lease, taking into account the remaining useful life of the Improvements at the expiration of the Term, as if such Taking had not occurred.

(e) Procedure for Apportioning Funds.

(i) Landlord and Tenant shall attempt, in good faith, to agree upon the apportionment of the Net Condemnation Proceeds or remaining Reconstruction Funds between Landlord and Tenant.

(ii) In the event that Landlord and Tenant are unable to agree upon the apportionment, either party shall have the right to submit such dispute (an "**Apportionment Dispute**") to arbitration in accordance with the provisions of this Section and the arbitration rules of the American Arbitration Association then in existence.

(iii) During the first ten (10) days after either party notifies the other of its desire to submit the Apportionment Dispute to arbitration, Landlord and Tenant shall attempt to agree upon a single person (the "**Expert**") who (a) shall be MAI certified, (b) shall have a minimum of ten (10) years' experience in appraisal of real estate in the State in which the Premises are located, and (c) has not conducted within the previous three (3) years, does not presently conduct, and does not anticipate conducting a material amount of business with either Landlord or Tenant or their Affiliates, or otherwise have a financial interest in either Landlord or Tenant or their Affiliates and who is otherwise independent (the "**Expert Qualifications**"). If the parties agree upon a single Expert, each of them shall be responsible for one-half of the costs of the Expert so appointed. If Landlord and Tenant are unable to agree upon a single Expert, then within ten (10) days after the expiration of the period for agreeing upon a single Expert, each party, by giving notice to the other, shall appoint an Expert who meets the Expert Qualifications. Such notice shall be accompanied by a statement of all business conducted by the party making the appointment, and its Affiliates, with the Expert so appointed. If a party does not appoint an Expert within ten (10) days after the other party has given notice of the name of its Expert, the single Expert selected shall then be responsible for deciding the Apportionment Dispute.

(iv) If the two Experts are appointed by the parties as provided in this Section, they shall meet promptly and attempt to decide the Apportionment Dispute in accordance with the provisions of this Section. If they are unable to agree upon a resolution of the Apportionment Dispute within twenty (20) days after the second Expert has been appointed, the two Experts shall attempt to select a third Expert meeting the Expert Qualifications, within ten (10) days after the expiration of the period for the two Experts to render a decision. If the two Experts are unable to agree upon a third Expert within such period, either of the parties to this

Lease may apply to the American Arbitration Association for the appointment of a third Expert who meets the Expert Qualifications. The third Expert, whether selected by the two Experts or by the American Arbitration Association, shall then be responsible for deciding the Apportionment Dispute. Each of the parties shall be responsible for the costs of its own Expert and one-half of the costs of the third Expert.

(v) In rendering a decision, the Expert(s) shall be entitled to solicit and receive both oral and written evidence, to conduct hearings and meetings and to consider any and all evidence which he deems necessary or appropriate to render his decision; provided, however, that in no event shall the Expert(s) conduct any *ex parte* hearings or otherwise receive oral evidence or testimony from any party outside the presence of the other party or, in the case of written evidence, unless a copy of such evidence is simultaneously delivered to the other party. The Expert(s) shall have no power to change the provisions of this Lease in any respect, and the jurisdiction of the Expert(s) is expressly limited accordingly.

(vi) The Expert(s) shall render a decision as soon as possible. Such decision shall be binding, final and conclusive on the parties (except in the case of manifest error), and judgment thereon may be entered in a court of competent jurisdiction.

(f) Taking For Temporary Use. In the event of a Taking of all or any portion of the Premises for temporary use or occupancy (a “**Temporary Taking**”):

(i) this Lease shall not terminate, there shall be no reduction in the Lease Payments payable under this Lease, and Tenant shall continue to perform and observe all of its obligations under this Lease as though such Taking had not occurred except only to the extent that it may be prevented from so doing;

(ii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys’ fees and disbursements);

(iii) the Net Condemnation Proceeds shall be held by the Insurance Depository and applied to the payment of Lease Payments coming due under this Lease. If the Temporary Taking extends beyond the expiration of the Term, Landlord shall be entitled to the portion of the Net Condemnation Proceeds allocable to the period after the expiration date;

(iv) at the termination of the Temporary Taking (whether prior or subsequent to the expiration date), Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition prior to such Temporary Taking. The portion of the Net Condemnation Proceeds allocable to such Reconstruction shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction upon substantially the same terms and conditions as are applicable to the Restoration Funds under Section 12. Tenant shall be responsible for any costs in excess of the amount of the award;

(v) any balance remaining after application of the condemnation award pursuant to Section 13(f)(ii), 13(f)(iii) and 13(f)(iv) shall be paid to Tenant.

(g) Survival. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

14. LANDLORD ENCUMBRANCES. It is expressly understood and agreed that Landlord's fee interest in the Land is not subordinate to any Leasehold Mortgage (as hereinafter defined). Tenant has no right to, and shall not, place or create any mortgage or other lien or encumbrance purporting to encumber Landlord's fee interest in the Land. In the event Landlord elects to encumber the Land or any portion thereof with a fee mortgage, such fee mortgage shall be subordinate to Tenant's rights under this Lease and upon Tenant's request, Landlord shall execute and cause such fee mortgagee to enter into a recognition, non-disturbance and attornment agreement with Tenant, substantially in the form attached hereto as **Exhibit F** or such other form as Landlord, Tenant, such fee mortgagee and any Leasehold Mortgagee may mutually agree to.

15. LEASEHOLD MORTGAGE.

(a) Tenant may from time to time, and without the consent of Landlord, secure financing (which may include, without limitation, mortgage loans, general credit lines, bond financing, including Community Development District bond financing, and CPACE financing) from banks, insurance companies, other financial institutions or other lenders (each one, a "**Leasehold Mortgagee**"), granting to such Leasehold Mortgagee as security for such financing or general credit lines a mortgage encumbering Tenant's leasehold interest in the Premises (which may include a collateral assignment of Tenant's leasehold interest in the Premises with rights of reassignment, hereinafter a "**Leasehold Mortgage**") and/or a security interest in any furnishings, fixtures, equipment and personalty purchased by or belonging to Tenant, or leased from third parties by Tenant and installed on the Premises by Tenant. To the extent any provision in this Section conflict or are inconsistent with any other provision of this Lease, the provisions of this Section shall control.

Tenant may also, with Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, apply for any county, state and federal grants that may be available to Landlord (including, without limitation, those available from the Florida Navigational District) for the financial benefit the Marina (collectively, the "**Grants**") on behalf of Landlord. Landlord agrees to reasonably cooperate with Tenant in connection with Tenant's application for any such Grants, provided that Landlord shall not be required to incur any cost or liability in connection therewith and Tenant shall be solely responsible for any costs incurred in connection therewith, including without limitation any contribution requirements.

(b) If Tenant shall enter into any such Leasehold Mortgage, the Tenant or Leasehold Mortgagee shall forward to Landlord a copy of such Leasehold Mortgage together with a written notice setting forth the name of the Leasehold Mortgagee and its notice information (address for certified mail and electronic mail (e-mail)).

(c) When giving notice to Tenant with respect to any default under the provisions of this Lease, Landlord shall also serve a copy of such notice upon the Leasehold Mortgagee, in accordance with such Leasehold Mortgagee's preferred form of notice as previously established pursuant to clause (b) above. No such notice to Tenant shall be deemed to have been given unless a copy of such notice has been mailed to such Leasehold Mortgagee, which notice must specify the nature of each such default.

(d) The Leasehold Mortgagee, upon mailing by Landlord of the notice referred to in subparagraph (c) of this Section, shall have, in addition to any period of grace extended to Tenant under the terms and conditions of this Lease, a period of ninety (90) days within which to cure the default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of Tenant for failure to make Lease Payments or to pay taxes, insurance or other monetary obligations of Tenant hereunder, the Leasehold Mortgagee shall be given written notice of such default by certified mail by Landlord, and the Leasehold Mortgagee shall have thirty (30) additional days from the date the notice of default was mailed within which to cure such default. The Leasehold Mortgagee's decision to cure, or cause to be cured, any default under the Lease shall be at the Leasehold Mortgagee's sole discretion and election and Leasehold Mortgagee shall not be required to cure any non-monetary default not within such Leasehold Mortgagee's control such as an act of bankruptcy.

(e) Each Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Tenant, and Landlord shall accept such performance by any Leasehold Mortgagee as if performed by Tenant. In case Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right (but not the obligation) to cure such default whether the same consists of the failure to make Lease Payments or to pay taxes, insurance, or other monetary obligation or the failure to perform any other matter or thing which Tenant is required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant.

(f) In the case of any default by Tenant, other than in the payment of Lease Payments under this Lease, Landlord, so long as no monetary default beyond any applicable notice and cure periods shall exist, will take no action to effect a termination of the Term of this Lease without first giving to the Leasehold Mortgagee a reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire Tenant's interest under this Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for serving such a notice shall be cured, and provided further, that nothing in this Section shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

(g) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this Section prior to its stated expiration date, Landlord will quit claim

to Leasehold Mortgagee any interest in the Improvements and, at the same time, enter into a new lease of the Premises upon the same terms and conditions as this Lease for the remainder of the Term with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, to a corporation or other entity approved to conduct business in the State of Florida, formed by or on behalf of such Leasehold Mortgagee or by or on behalf of the holder of the note secured by the Leasehold Mortgage held by such Leasehold Mortgagee, for the remainder of the Term, effective on the date of such termination, upon the covenants, agreements, terms, provisions and limitations contained in this Lease (including, without limitation, the Lease Payments), provided that such Leasehold Mortgagee makes written request and executes, acknowledges and delivers to Landlord such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to Landlord of all amounts then due to Landlord, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the Lease Payments thereafter becoming due under such new lease. In no event, however, shall such mortgagee or its nominee or designee be required to cure a default under this Lease which is not subject to being cured by such mortgagee or its nominee or designee in order to obtain a new lease. Any new lease referred to in this Section shall not require any execution, acknowledgment or delivery by Landlord in order to become effective as against Landlord and Landlord shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by Landlord of such new lease accompanied by (i) payment to Landlord of all amounts then due to Landlord of which the Leasehold Mortgagee shall theretofore have received written notice; and (ii) an agreement by the Leasehold Mortgagee to pay all other amounts then due to Landlord of which the Leasehold Mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by Landlord of such new lease, as provided in this subparagraph, Landlord shall be deemed to have executed, acknowledged and delivered to the Leasehold Mortgagee an assignment of all subleases covering the Premises which theretofore may have been assigned and transferred to Landlord and all subleases under which subtenants shall be required to attorn to Landlord pursuant to the terms and conditions of such subleases or this Lease. Such assignment by Landlord shall be deemed to be without recourse as against Landlord. Within ten (10) days after a written request therefore by the Leasehold Mortgagee, such assignment or assignments shall be reduced to writing in recordable form and executed, acknowledged and delivered by Landlord to the Leasehold Mortgagee.

(h) The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment or quitclaim conveyance of this Lease and the Improvements in lieu of foreclosure, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease as provided in subparagraph (j) below, except that such Leasehold Mortgagee may assign this Lease without Landlord's consent to any assignee at any time, provided that prior notice is given to Landlord in accordance with this Lease.

(i) In the event that a Leasehold Mortgagee shall become the owner or holder of Tenant's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Tenant," as used in this Lease, means only the owner or holder

of Tenant's interest for the time being so that, in the event of a sale, assignment or other disposition of Tenant's interest in this Lease by the Leasehold Mortgagee, the Leasehold Mortgagee shall be entirely freed and relieved of all covenants and obligations of Tenant under this Lease and it shall be deemed and construed, without further agreement between Landlord and the Leasehold Mortgagee or between Landlord, the Leasehold Mortgagee and the Leasehold Mortgagee's purchaser or assignee at any such sale or upon assignment of Tenant's interest, that the purchaser or assignee of Tenant's interest has assumed and agreed to carry out any and all covenants and obligations of Tenant. The Leasehold Mortgagee's purchaser or assignee shall sign an Assignment and Assumption Agreement of this Lease.

(j) Within ten (10) days after written request by Tenant or by Tenant's Leasehold Mortgagee, or in the event that upon any sale, assignment or mortgaging of Tenant's interest in this Lease by Tenant or Tenant's Leasehold Mortgagee, an offset statement shall be required from Landlord, Landlord agrees to deliver in recordable form a certificate to any proposed Leasehold Mortgagee, purchaser, assignee or to Tenant, certifying (if such be the case) (i) the amount of the Lease Payments due under the Lease, if any, and the date to which Lease Payments have been made; (ii) whether this Lease is in full force and effect; (iii) whether Landlord has any knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) whether there are no defenses or offsets which may be asserted by Landlord against Tenant in respect of obligations pursuant to this Lease as of the date of the estoppel. The estoppel letter shall be certified to Landlord and the Leasehold Mortgagee and none other.

(k) Reference in this Lease to acquisition of Tenant's interests in this Lease by the Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the Leasehold Mortgage and provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

(l) So long as Tenant's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee that Landlord shall not sell, grant or convey to Tenant all or any portion of Landlord's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee. In the event of any such sale, grant or conveyance by Landlord to Tenant, Landlord and Tenant agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This subparagraph (l) shall not be construed to prevent a sale, grant or conveyance of Landlord's fee simple title by Landlord to any person, firm or corporation other than Tenant, its successors, legal representatives and assigns.

(m) Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of subparagraph (i), above) of a Leasehold Mortgagee; provided that such assignee shall forward to Landlord a copy of such assignment of Leasehold Mortgage, together with a written notice setting forth the name and address of the assignee and its notice information (address for certified mail and electronic mail (e-mail)).

(n) Any Leasehold Mortgage shall be specifically subject and subordinate to Landlord's rights under this Lease. The sentence immediately preceding shall not be deemed or

construed (by implication or otherwise) to impose or establish upon Tenant's interest in this Lease or upon the lien of any Leasehold Mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against Landlord or Landlord's interest in this Lease. Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Landlord in the Premises, or any portion of them, be encumbered or subordinated, except for a mortgage on Tenant's leasehold interest.

(o) No Leasehold Mortgagee or other person succeeding to the interest of Tenant in this Lease through or subsequent to an enforcement proceeding shall be liable under this Lease, unless and until such time as it becomes the tenant of the leasehold estate, and then only for such obligations of Tenant which accrue during the period while it remains the tenant of the leasehold estate.

(p) Notwithstanding any provision in this Lease to the contrary, in the event of any Casualty or Taking of the Premises or any portion thereof and if allowed by law or its agreements with Tenant, the most senior Leasehold Mortgagee (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not request or shall not be permitted by law or its agreements with Tenant to do so) shall be permitted to receive insurance proceeds and/or condemnation awards otherwise payable to Tenant and shall be permitted (but shall not be obligated except as required by law or its agreements with Tenant or as provided in the next sentence) to restore the Premises. In addition, if such Leasehold Mortgagee (by reason of its acquiring Tenant's leasehold estate) shall be obligated under this Lease to repair or restore the Premises, such obligation shall be limited to the amount of such proceeds or awards actually received by such Leasehold Mortgagee.

(q) Upon Tenant's request, and at no material cost to Landlord, Landlord shall execute such documents or instruments confirming Tenant's right and authority to enter into a Leasehold Mortgage and/or granting a security interest in this Lease and confirming that Landlord will give such Leasehold Mortgagee notice and the right to cure any Default of Tenant as provided herein. In addition, Landlord, upon the request of Tenant or any Leasehold Mortgagee, shall execute such reasonable modifications or amendments of this Lease as shall be required by such Leasehold Mortgagee or by any person to which Tenant has made application for a Leasehold Mortgage provided such modifications or amendments do not, taken as a whole, materially affect Tenant's obligations or materially affect Landlord's rights under this Lease. Landlord shall not unreasonably refuse any such request for such modification or amendment. Further, Landlord agrees to enter into a triparty agreement with Tenant and its lender, upon terms and conditions acceptable to such lender and to Landlord, to set forth the rights of Tenant's lender substantially as provided in this Section. In no case shall Landlord be required to guarantee any loan, provide any financing, or mortgage any of its property.

(r) Landlord and Tenant agree that they will make good faith efforts to assist one another so that Tenant can obtain a commercially reasonable loan to finance the construction of the Public Marina Component.

16. LANDLORD NON-DISTURBANCE AND RECOGNITION AGREEMENT.

Tenant may enter into one or more subleases for the Premises with subtenants without the consent of Landlord. Provided, in the event the Tenant desires a non-disturbance agreement for a subtenant ("NDA"), the Tenant shall obtain the prior written consent of the subject sublease(s) from Landlord, and Landlord (in connection with entering into such NDA) agrees that such consent shall not be unreasonably withheld, conditioned, or delayed, whereupon:

(a) Upon any termination of this Lease, provided the applicable subtenant of the Premises (or any portion thereof) is not in default under its sublease beyond any applicable notice and cure periods, (i) Landlord shall not disturb such subtenant's possession of its subleased premises, nor shall any of such subtenant's rights under its sublease be affected in any way by reason of any default under this Lease by Tenant, provided such subtenant shall attorn and recognize Landlord, as the subtenant's sublandlord under its sublease and (ii) Landlord shall recognize such subtenant's rights under its sublease, as such subtenant's sublandlord under its sublease, and accept such subtenant's attornment.

(b) Upon any such attornment and recognition, the applicable sublease shall continue in full force and effect as, or as if it were, a direct lease between Landlord and the subtenant upon all of the then executory terms, conditions and covenants as are set forth in the sublease prior to the date of attornment, and shall be applicable after such attornment and recognition provided, however, at no time shall Landlord be (i) liable for any prior default by Tenant, as sublandlord under the sublease; (ii) responsible for any monies owing by Tenant, as sublandlord under the sublease; (iii) required to account for any security deposit, other than any security deposit actually delivered to Landlord or for any rent that the subtenant might have paid for more than the current month to Tenant; nor (v) liable for the breach of any representation or warranty (of any nature whatsoever) made by Tenant or to any other party for matters arising prior to the date of attornment.

(c) Upon the request of a subtenant of the Premises (or any portion thereof), Landlord shall enter into a commercially reasonable non-disturbance, attornment and recognition agreement with the subtenant setting forth the terms and conditions of this Section 16 and such other terms as mutually may be agreed upon by Landlord and the subtenant.

17. COVENANT OF QUIET ENJOYMENT. Landlord covenants and warrants that, provided Tenant is not in breach of any material term of this Lease beyond any applicable notice and cure period, Tenant shall peacefully have and enjoy the sole possession of the Premises during the Term free from the adverse claims of any persons, firms or corporations claiming by, through or under Landlord. Landlord agrees upon the written request of the Tenant, that Landlord will (i) apply for a submerged land lease (on terms to be coordinated with the Tenant in connection with such application), as Tenant may request and, upon obtaining such submerged land lease to include such area as part of the Premises leased/subleased by Landlord to Tenant; (ii) execute any and all easements or rights of way on, over or under the Premises or any part thereof at Tenant's request which are or may be needed or required by Tenant in conjunction with Tenant's use and enjoyment of the Premises; and (iii) execute any other public utility or governmental body related documents or agreements in the form customarily provided by such public utility or governmental body, which is necessary to fulfill the intent and purposes of this Lease, including, without limitation, the facilitation of, a successful prosecution of all Improvements and construction, signage rights, parking, access, drainage, utilities, communications, lighting, governmental services, the

operations by Tenant under this Lease, and all other matters and things contemplated or impliedly necessary under this Lease for its full effectuation, performance or realization. Landlord agrees not to file or cause any zoning change to be made that would affect the Premises without the prior written approval of Tenant. Landlord warrants and represents that there are no mortgages or deeds of trust applicable to the Premises as of the Effective Date.

Landlord represents and warrants that the Premises are owned in fee simple by Landlord; that it is seized of the Premises in fee, subject only to the exceptions set forth on **Exhibit D** hereto, and that it has entered into this Lease with proper authority. If, at any time during the Term, any indebtedness, lien, assessment, claim, or other matter whatsoever shall arise or shall be asserted which in any way interferes or threatens to interfere with Tenant's use of the Premises as herein provided or referenced, and such indebtedness, lien, assessment, claim, or other matter arises due to Landlord's breach of this Lease or any act or omission of Landlord from and after the Effective Date, then Tenant shall have the right to expend such sums as are necessary to abate said threat or interference and deduct the same from consideration due Landlord until Tenant is reimbursed in full.

18. ASSIGNMENT AND SUBLETTING.

(a) Except as otherwise expressly provided herein, Tenant shall be permitted to sublease or license any portion of the Premises, in whole or in part, in any manner whatsoever, to subtenants (a "**Premises Tenant**") pursuant to a sublease in the ordinary course of its business (a "**Tenant Lease**") without the consent of Landlord, if the use specified in the Tenant Lease is permitted hereunder and by current and applicable zoning requirements. Tenant also may transfer, license, lease, sublease, and/or assign this Lease and its rights and interests hereunder, without the consent of Landlord, (i) at any time, to an Affiliate (as such term is defined in the Comprehensive Agreement), provided that Tenant or the Developer or a manager who is a knowledgeable manager reasonably approved by Landlord is the manager of such Affiliate; and (ii) from and after the issuance of a certificate of occupancy with respect to the Public Marina Component, to any third party. Tenant shall also be permitted to, at any time, transfer, convey or pledge its interest in this Lease to a Leasehold Mortgagee without the consent of Landlord. Any such sublease, transfer, conveyance or pledge by the Tenant shall be subject to all of the terms and provisions of this Lease. Except as otherwise expressly permitted hereunder, if Tenant seeks to assign, transfer or sell its leasehold interest in this Lease, the express prior written consent of Landlord shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Any such consent to an assignment shall be subject to all of the terms and provisions of this Lease and, provided that the assignee agrees in writing to assume all of the Tenant's rights and obligations under this Lease, shall release Tenant from its obligations under this Lease. Landlord's consent shall not be required for Premises Tenant's certificates of occupancy, building permits, tenant allowances or buildout terms and procedures except as may otherwise be required by Landlord by virtue of Landlord being the Governmental Authority overseeing these items in its regulatory capacity. Within sixty (60) days of executing a Tenant Lease with a Premises Tenant, Lessee shall notify Lessor the Tenant Lease has been executed and the identity of the Premises Tenant.

(b) Should Tenant take any action to assign this Lease without the prior written consent of Landlord as provided in Section 18(a), then any such assignment shall be null and void and of no force and effect.

(c) Any successor or assignee of Tenant's rights and/or obligations under this Lease shall expressly assume in writing performance of such rights and/or obligations and deliver same to Landlord within ten (10) days after consummation of the assignment, transfer or sale.

19. NOTICES. All notices, requests, consents, demands, approvals or other communications required or permitted under this Lease shall be in writing, addressed to the person identified below, and delivered either by: (a) hand delivery, (b) overnight courier by a nationally recognized courier, with all fees prepaid; Registered or Certified Mail, return receipt requested and postage prepaid; or delivered by email with "FORMAL NOTICE UNDER GROUND LEASE" in the subject line:

If to Landlord:

Town of Lake Park
Attention: Town Manager
535 Park Avenue
Lake Park, Florida 33403

With a copy to:

Town of Lake Park
Attention: Town Attorney
535 Park Avenue
Lake Park, Florida 33403

If to Tenant:

FD P3 LP MARINA, LLC,
c/o Forest Development P3 LPM, LLC
Attn: Peter Baytarian
11231 US Highway 1, Suite 354
North Palm Beach, Florida 33408
info@forestdevelopment.com

And to:

Saul Ewing LLP
Attn: Anthony Kang
701 Brickell Avenue, 17th Floor
Miami, Florida 33131
Anthony.kang@saul.com

With a copy to:

Zabik & Associates, Inc.
Attn: Larry Zabik
11398 Okeechobee Blvd, Suite 2
Royal Palm Beach, Florida 33411
lzabik@zabikandassociates.com

Any and all tax notices and information shall also be sent to: Tenant

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, or (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt.

Landlord and Tenant agree that any and all notices given by either party shall be provided simultaneously to any assignee of Tenant or any lender to Tenant when such assignee or lender has been previously identified in writing to the parties along with the appropriate address for such notices. Either Party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

20. MISCELLANEOUS.

(a) Captions. Captions or headings of sections are for convenience only and shall not be considered in construing the meaning of the contents of such section.

(b) Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(c) Prevailing Party. Should Landlord or Tenant institute any legal proceedings against the other for breach of any provisions herein contained, each party in such action shall be responsible for its own conduct costs and litigation expenses including reasonable attorneys' fees through all levels of appeal.

(d) No Prior Agreements / No Third-Party Beneficiaries. This Lease supersedes and cancels all prior negotiations between the parties, and all other negotiations and understandings are merged into this Lease. This Lease, together with the terms and conditions of the Comprehensive Agreement applicable to the Public Marina Component, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. The parties acknowledge that there are no other promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between and among them, except as set forth, referenced, or incorporated herein or in the Comprehensive Agreement (to the extent incorporated herein). Furthermore, this Lease is intended solely for the benefit of the parties hereto expressly noted herein and whose signatures appear hereon and their respective permitted successors and assigns, as applicable. No third party shall have any rights or interest herein and there are no and shall be no third-party beneficiaries hereto.

(e) Amendments and Modifications/No Oral Modifications. All amendments or modifications to this Lease must be in writing signed by the Parties. No purported amendments or modifications to this Lease which are oral shall be effective, binding or enforceable.

(f) Interpretation and Gender. The singular shall include the plural, and the masculine, feminine or neuter shall include either of the others as appropriate in context.

(g) Successors and Assigns. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; they shall all be bound jointly and severally by the terms, covenants and agreements herein.

(h) No Waiver. The failure to enforce any particular provision of this Lease on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision.

(i) Estoppel Certificates. Landlord and Tenant agrees, from time to time as may be requested by each other, to execute, acknowledge and deliver within thirty (30) days after being requested to do so an estoppel letter certifying the following to such party as it reasonably may designate, including any Leasehold Mortgagee: (a) that (i) this Lease is in full force and effect and has not been amended, modified or superseded; (ii) Landlord and Tenant are not in default under this Lease; (iii) Tenant has no defense, offset or counterclaim under this Lease or otherwise against Landlord with respect to this Lease or the Premises; (b) the date to which Lease Payments have been paid; and (c) such other information as the requesting party may reasonably request.

(j) Calculation of Time Periods. In the computation of any time periods hereunder shall exclude Saturdays, Sundays, and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday, or a legal holiday shall extend to 6:00 p.m. eastern time of the next business day.

(k) Florida Law and Venue. This Lease and all of its provisions shall be construed in accordance with the laws of the State of Florida. In the case of any legal proceedings, venue shall be Palm Beach County.

(l) Severability. In the event any provision of this Lease is prohibited, unenforceable or invalid under the laws of any jurisdiction, including those of the State of Florida, such prohibition, or unenforceable or invalid provision shall not in any fashion affect the enforceability or validity of the remaining provisions hereof.

(m) Construction. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation of this Lease.

(n) No Cross Default. The Comprehensive Agreement contemplates that the "Project" (as defined in the Comprehensive Agreement) will be comprised of the "Hotel Component," the "Boat Storage Component," the "Public Marina Component" and the "Marina Restaurant Component" (collectively the "**Components**" and individually a "**Component**"). The Developer has created a separate entity to be the tenant under this Lease and separate entities to be

the tenants under separate ground leases with Landlord with respect to the Boat Storage Component (the “**Boat Storage Lease**”), the Hotel Component (“**Hotel Lease**”), and the Marina Restaurant Component (the “**Restaurant Lease**”). The Boat Storage Lease, the Hotel Lease and the Restaurant Lease are collectively referred to herein as the “**Other Leases**” and individually as an “**Other Lease**”).

Landlord and Tenant hereby agree that the rights and obligation under the Comprehensive Agreement shall be bifurcated so that (i) any rights and obligations with respect to the Public Marina Component under the Comprehensive Agreement shall only benefit and be required to be performed by the Tenant under this Lease, any obligation under this Lease shall only apply to the Public Marina Component under the Comprehensive Agreement, and any breach of the obligations under this Lease or the rights and obligations under the Comprehensive Agreement with respect to the Public Marina Component shall not affect or constitute a default under the Other Leases; (ii) any rights and obligations with respect to any Component (other than the Public Marina Component) under the Comprehensive Agreement shall only benefit and be required to be performed by the tenant under the applicable Other Lease, any obligation under the applicable Other Lease shall only apply to the applicable Component of such Other Lease under the Comprehensive Agreement, and any breach of the obligations under such Other Lease or the rights and obligations under the Comprehensive Agreement with respect to the Component applicable to such Other Lease shall not affect or constitute a default under this Lease; and (iii) to the extent of any inconsistency between the terms of this Lease and the terms of the Comprehensive Agreement, the terms of this Lease shall prevail and control.

(o) Landlord Approval. Landlord shall act on requests from Tenant for any consent or approval hereunder in a commercially reasonable manner and shall use commercially reasonable efforts to respond to any such request within twenty (20) days following Landlord’s receipt thereof (unless another time period for such response is expressly provided for herein). Landlord’s response may consist of an approval or disapproval of the request, or a conditional approval thereof subject to specified conditions, or a request for further data or information, or any combination thereof. If Landlord does not approve, reject or request additional information regarding any request hereunder within twenty (20) days following Landlord’s receipt thereof (or another time period expressly provided for herein with respect thereto), Tenant may provide to Landlord a second written request, which shall include a legend, printed in capital letters and boldface type, to the following effect: “**THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY LANDLORD OF THE ACTION REQUESTED BY TENANT.**” Landlord shall be deemed to have approved or consented to such action if Landlord fails to object to or request additional information with respect thereto within ten (10) days of such second request.

Wherever in this Lease the approval or consent of Landlord is required, it is understood and agreed that, unless specifically stated to the contrary, such approval or consent shall be granted or withheld in the reasonable discretion of Landlord or of the Town Manager) of Landlord (the “**Town Manager**”) (as applicable), within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except a may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the Town Manager in the discretion of the Town Manager acting reasonably:

- (i) The exercise of Landlord's rights of entry and inspection;
- (ii) The exercise of Landlord's right or obligation to execute a joinder in (a) applications for land development approvals or other governmental approvals (including permits) which are necessary for Tenant to obtain from governmental authorities, and where such applications require evidence of the consent of the property owner, and (b) any easement, declaration, amendment or creation of an agreement affecting title to the Premises and any other document as may be requested by Tenant in connection with the development and/or operation of the Premises;
- (iii) The exercise of Landlord's right to receive and approve or not approve and specify the basis for such disapproval the form of certificates of insurance, policies, limits, and coverages of insurance, bonds, and Environmental Assessments;
- (iv) The execution of estoppel statements (or any modifications of the terms thereof) to be given by Landlord under this Lease;
- (v) The approval, if required, of any assignment or sublease; and
- (vi) Other provisions of this Lease where the act, approval or consent of the Landlord is expressly authorized or required, except any amendment to this Lease shall require the written consent of the Town Commission of the Landlord.

(p) Further Assurances. Each Party will promptly cooperate each with the other and will execute and deliver any and all written further assurances and/or documents that are reasonably necessary, convenient, or desirable to evidence, complete or perfect (or any combination thereof) the transactions contemplated by this Lease and/or the Comprehensive Agreement, so long as no further assurance or document to be executed operates to impose any new or additional obligation or liability upon any Party. Each Party will so perform all other acts that are reasonably necessary, convenient, or desirable for any such purpose, so long as no new or additional obligations or liabilities are incurred as a result thereof.

Additionally, Landlord further agrees that it will execute such documents and perform such acts as Tenant may reasonably require in connection with the development and/or operation of the Premises, including, but not limited to: (i) submitting applications and working with Tenant to cause the release, removal and/or modification of the Deed Restrictions and Reverter clause (as defined in the Comprehensive Agreement) so that the development and operation of the Premises as permitted by this Lease will not violate nor trigger any violation or Reverter of the Deed Restrictions and/or Reverter clauses; and (ii) executing such easements, submerged land leases, documents affecting title to the Premises, applications for governmental approvals, modifications and/or termination of existing easements and/or restrictions affecting the Premises, creation of declarations affecting the Premises and such other documents and acts as reasonably requested by Tenant in connection with its development and/or operation of the Premises, provided that such cooperation shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(q) Grant Funding. Landlord and Tenant agree to comply with their respective obligations under the Comprehensive Agreement relating to the Public Marina Component. The

Town of Lake Park may, as Landlord, qualify for grants and other public funds that if received can be used by Tenant for capital infrastructure and other improvements to the Premises. Therefore, Landlord and Tenant agree that Tenant may, at Tenant's sole cost and expense, apply for such local, State and Federal funding, and that to the extent required, Landlord will cooperate with Tenant to execute applications or will otherwise assist tenant in applying and, upon Landlord receiving such funds, will make such funds available to Tenant to be used by Tenant in making such improvements.

21. DELAYS. In any case where either party hereto is required to do any act, such party shall be excused from the performance thereof for the duration of delays caused or resulting from Acts of God, war, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, government regulations, moratorium, other causes beyond such party's reasonable control or circumstances or events characterized at law as "force majeure", whether the time for such performance shall be designated by a fixed date, a fixed period of time, or a "reasonable" period of time. In addition, should any lawsuit, legal proceeding, investigation or other legal matter be filed or commenced against Landlord, Tenant, or any other party related to this Lease, which materially affects this Lease, all time periods contained in this Lease shall be delayed until such legal matter is resolved in its entirety, including any and all appellate proceedings or the like. Notwithstanding anything to the contrary set forth in this Section 21 or elsewhere in this Lease, no event of force majeure (or any event deemed to be beyond the control of Tenant) shall be construed to apply to any of Landlord's or Tenant's monetary obligations hereunder or to permit or allow either Landlord or Tenant to delay or defer any such obligation.

22. ENVIRONMENTAL MATTERS.

(a) For purposes hereof, the following terms shall have the following meanings:

(i) **"Environmental Laws"** shall mean all Federal, state and local laws, statutes, ordinances, codes, rules, regulations and other requirements respecting the environment, including but not limited to those respecting: (A) the generation, use, handling, processing, storage, treatment, transportation, or disposal of any solid or hazardous wastes, or any hazardous or toxic substances or materials; (B) pollution or contamination of land, improvements, air (including indoor air), or water (including groundwater); (C) emissions, spills, releases, or discharges of any substance onto or into the land, improvements, air (including indoor air), or water (including groundwater), or any sewer or septic system; (D) protection of wetlands; (E) aboveground or underground storage tanks; (F) air quality (including indoor air quality) or water quality (including groundwater quality); and (G) protection of endangered species. Without limiting the generality of the foregoing, the term "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Sec. 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C., Sec. 6901, et seq., and the Toxic Substance Control Act of 1976, as amended, 15 U.S.C., Sec. 2601, et seq.

(ii) **"Environmental Violation"** shall mean (A) any direct or indirect discharge, disposal, spillage, emission, escape, pumping, pouring, injection, leaching, release, seepage, filtration or transporting of any Hazardous Substance at, upon, under, onto or within the

Premises, or from the Premises to the environment, in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (B) any deposit, storage, dumping, placement or use of any Hazardous Substance at, upon, under or within the Premises or which extends to any adjoining property in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (C) the abandonment or discarding of any barrels, containers or other receptacles containing any Hazardous Substances in violation of any Environmental Laws, or (D) any violation of or noncompliance with any Environmental Law.

(iii) **“Governmental Authority”** shall mean any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, special service district or public body, or any court or administrative tribunal.

(iv) **“Hazardous Substances”** shall mean any substance, material or waste defined as a pollutant or contaminant, or as a hazardous, toxic or dangerous substance, material or waste, under any Environmental Law, including, without limitation, petroleum, petroleum products, PCBs and asbestos.

(b) Tenant shall not use, or permit its agents, employees, contractors, subtenants, licensees or invitees to use the Premises for the purpose of treating, producing, handling, transferring, processing, transporting, disposing, using or storing a Hazardous Substance in violation of any Environmental Law. Tenant shall, at Tenant’s own expense, comply with all Environmental Laws as the same affect the Premises or the operations and activities of Tenant, its agents, employees, contractors, subtenants, licensees or invitees (collectively, **“Tenant Parties”**) on or about the Premises.

(c) In the event Tenant becomes aware of any Environmental Violation or any suspected Environmental Violation at the Premises, Tenant shall promptly (a) notify Landlord of such Environmental Violation or suspected Environmental Violation, and (b) deliver to Landlord any notice filed by or received by Tenant with or from any Governmental Authority relating thereto immediately upon filing or receipt thereof.

(d) In the event that, in the reasonable opinion of Landlord, there is a basis to believe that an Environmental Violation exists, Landlord shall have the right to have its environmental consultants (**“Site Reviewers”**) visit the Premises and perform environmental site investigations and assessments (**“Site Assessments”**) on the Premises for the purpose of determining whether there exists on the Premises any Environmental Violation or any condition which is likely to result in any Environmental Violation. Such Site Assessments may include both above and below the ground testing for Environmental Violations and such other tests as may be necessary, in the opinion of the Site Reviewers, to conduct the Site Assessments. The Site Reviewers shall use their good faith diligent efforts to minimize any interference with the

operations of Tenant and other occupants of the Premises. Tenant shall supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and shall make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters.

(e) In the event that there exists any Environmental Violation caused by any Tenant Party, Tenant shall, at its own cost and expense:

(i) promptly and diligently take any and all actions necessary to return the Premises to a condition which is in compliance with Environmental Laws, and which will not impede or limit further development of the Premises;

(ii) provide Landlord, within ten (10) days after Landlord's request therefor, adequate financial assurances that Tenant will effect remediation in accordance with applicable Environmental Laws. Such financial assurances shall be a bond or letter of credit in form and substance reasonably satisfactory to Landlord and in an amount equal to Landlord's reasonable estimate of the anticipated cost of such remedial action;

(iii) without limiting the generality of Section 22(e)(i), make all submissions and provide all information required by Environmental Laws. Tenant shall comply with all requests of the United States Environmental Protection Agency, the Florida Department of Environmental Protection and any other Governmental Authority having jurisdiction over the Premises, including any request that a cleanup plan be prepared and that a cleanup be undertaken with respect to the Premises. In such event, Tenant shall, at Tenant's own expense, prepare and submit appropriate documents, and carry out the approved plans, or take such other action as may be appropriate to eliminate any environmental harm or threat to public health or welfare and to eliminate any potential liability of Landlord or Tenant. Any submissions made by Tenant pursuant to this Section and any action taken by Tenant pursuant to such submissions shall be subject to the prior review and approval of Landlord, which approval shall not be unreasonably withheld.

(f) Tenant shall indemnify, defend and save Landlord harmless from all claims, actions, suits, proceedings, losses, damages, liabilities, fines and expenses (including without limitation fees of attorneys, investigators and experts) arising or alleged to arise from or in connection with (a) any Environmental Violations, and (b) Tenant's failure to provide all information, make all submissions and take all actions with respect to the Premises required by any Governmental Authority in connection with any Environmental Violations.

22. RADON. Section 404.056 (6), Fla. Stat., requires the inclusion of the following "Notification on Real Estate Documents" at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

23. SURRENDER. Upon the expiration or any earlier termination of the Term:

(a) Tenant shall surrender the Premises to Landlord, in good order, condition and repair, reasonable wear and tear, Casualty and Taking excepted;

(b) all right, title and interest of Tenant in and to the Premises shall automatically cease and terminate; and

(c) Tenant shall deliver the following to Landlord, to the extent in the possession or control of Tenant: (a) executed counterparts of any subleases, occupancy, license and concession agreements; (b) executed counterparts of any service and maintenance contracts then affecting the Premises; (c) true and complete maintenance records for the Premises; (d) any original licenses and permits then pertaining to the Premises, including, without limitation, the then existing certificate of occupancy for the Premises; and (e) any warranties and guaranties then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Premises, together with a duly executed assignment thereof to Landlord. Nothing herein contained shall be or be deemed to be a consent by Landlord to any sublease, occupancy, license, concession agreement, service or maintenance contract for a term to expire later than the Expiration Date.

Notwithstanding the foregoing to the contrary, Landlord shall have the right to elect upon the expiration or any earlier termination of the Term, by written notice to Tenant no later than six (6) months prior to the date of such expiration or earlier termination, to require Tenant to raze the Improvements, and clear, grade and seed the former location thereof and put the Premises in good, safe, lawful, clean and orderly condition, in which event Tenant, at its sole cost and expense, shall do so at its sole cost and expense within one hundred and eighty (180) days of such expiration or termination.

24. RIGHT OF FIRST REFUSAL. From and after the date hereof and during the Term, Landlord shall not sell, transfer or otherwise dispose of or convey all or part of Landlord's fee interest in the Premises to any third party until and unless Landlord shall have obtained a bona fide offer therefor (the "**Landlord's Offer**"), delivered written notice thereof to Tenant, which notice shall contain a true and accurate copy of Landlord's Offer, and offered to sell, transfer or otherwise dispose of such fee interest to Tenant at the same price and, except as hereafter provided, upon the same terms and conditions as contained in Landlord's Offer, and Tenant has not elected to exercise its right of first refusal in accordance herewith.

If Tenant shall either deliver written notice of rejection of Landlord's Offer to Landlord or fail to deliver written notice of acceptance of Landlord's Offer within thirty (30) days after the date of receipt of Landlord's notice, Landlord's fee interest in the Premises may, during the one hundred eighty (180) days thereafter, be sold, transferred or otherwise disposed of to the original offeror at the same price and upon the same terms and conditions as contained in Landlord's Offer.

In the event Tenant rejects Landlord's Offer or fails to accept Landlord's Offer in accordance herewith, this Lease and all of its terms and conditions (including this right of first

refusal) shall nevertheless remain in full force and effect and Landlord and any purchaser or purchasers of the Premises shall be bound thereby.

Failure of Tenant to exercise its right of first refusal on one or more occasions shall not affect Tenant's right to exercise it on any subsequent occasion. Any sale or transfer of the Premises, or any part thereof, other than in strict compliance with the terms of this Section shall be null and void and of no effect as to Tenant, and Tenant shall be entitled to purchase the Premises from the purchaser upon the same terms and conditions and at the same price specified in Landlord's Offer, provided Tenant notifies Landlord of its election thirty (30) days after receipt of notice that complies with the requirements hereof. The making of Lease Payments to such purchaser or otherwise treating such purchaser as Landlord shall not be deemed to be a waiver of Tenant's right of first refusal or any other right or privilege of Tenant and shall not create an estoppel with respect thereto.

Any sale or transfer of Landlord's interest in the Premises, or any part thereof shall be expressly made subject to all of the terms, covenants and conditions of this Lease. In the event Landlord's Offer provides for the sale and purchase of Landlord's interest in the Premises and other property, Tenant shall only be required to purchase all the Premises in the event it desires to exercise its right of first refusal hereunder.

In the event Tenant exercises its right of first refusal then, notwithstanding the terms of Landlord's Offer (i) Landlord shall convey title to the Premises by warranty deed approved by Tenant and the title company; (ii) title to the Premises shall be free and clear of any liens and encumbrances except the lien for current taxes which are not delinquent at the time of closing and such other exceptions to title as may have been created by Tenant during the Term or as existed on the date hereof and/or were approved by Tenant thereafter; and (iii) title to the Premises shall otherwise comply with the terms of this Lease as they pertain to condition of title. Upon such election by Tenant, Landlord and Tenant agree to act in good faith to consummate a purchase agreement for the Premises incorporating the express terms of Landlord's Offer and other customary terms and provisions for similar transactions of similar property located in the same geographic area as the Premises.

25. NO BROKER. Landlord and Tenant represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction and that there are no claims or rights for commissions, finders' fees or other compensation (collectively, "**compensation**") by any person or entity. If any broker or finder asserts a claim for compensation based upon any actual or alleged contact, dealings or communication with Landlord or Tenant, then the party through whom such broker or finder makes its claim shall indemnify and hold the other party (the "**Indemnified Party**") harmless from and against any and all claims, damages, judgments, suits, liabilities, losses, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) suffered or incurred by or brought against the Indemnified Party in connection with such claim for compensation..

26. MEMORANDUM OF LEASE. Immediately following the execution of this Lease, the parties shall execute and record a Memorandum of Lease in the public records in the form attached hereto as **Exhibit E**.

27. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR THE RELATIONSHIP OF THE PARTIES CREATED HEREBY. THE PARTIES FURTHER HEREBY WAIVE THE RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE FOREGOING WAIVERS ARE IRREVOCABLE AND MUTUALLY, KNOWINGLY, WILLINGLY, INTENTIONALLY AND VOLUNTARILY MADE AFTER EACH PARTY HAS HAD THE BENEFIT OF OR OPPORTUNITY TO GAIN LEGAL ADVICE AND COUNSEL. EACH PARTY REPRESENTS, WARRANTS AND AFFIRMS TO THE OTHER THAT NO PARTY HAS IN ANY WAY AGREED, REPRESENTED OR OTHERWISE SUGGESTED OR IMPLIED THAT IT WILL NOT FULLY ENFORCE THE FOREGOING WAIVERS IN ALL INSTANCES.

[The Balance of the Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

TENANT:

FD P3 LP MARINA, LLC,
a Florida limited liability company

By: _____

Name:

Title:

Date: _____

LANDLORD:

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

Exhibit A

Site Plan

Exhibit B

Legal Description of the Premises

Exhibit C**Lease Payments**

Period	Lease Payment
Calendar Year 2024	\$0
Calendar Year 2025	\$75,000.00
Calendar Year 2026	\$75,000.00
Calendar Year 2027	\$75,000.00
Calendar Year 2028	\$75,000.00
Calendar Year 2029	\$75,000.00
Calendar Year 2030	\$75,000.00
Calendar Year 2031	\$75,000.00
Calendar Year 2032	\$75,000.00
Calendar Year 2033	\$75,000.00
Calendar Year 2034	\$75,000.00

Lease Payments shall be made on or before May 1 of each calendar year from 2025 to 2034

No Lease Payments shall be due or payable commencing with calendar year 2035

Exhibit D

Permitted Title Exceptions

Exhibit E

Form of Memorandum of Lease

This instrument was prepared by:

Saul Ewing LLP
 Attention: Anthony Kang
 701 Brickell Avenue, FL 17
 Miami, Florida 33131

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (“Memorandum”) is made as of the ____ day of _____, 2024, by and between TOWN OF LAKE PARK, FLORIDA, a Florida municipal corporation, having an address of _____ (“Landlord”), and _____, a Florida limited liability company, having an address of _____ (“Tenant”).

WITNESSETH:

1. That by Ground Lease of even date hereof (the “Lease”), Landlord has demised and leased to Tenant and Tenant has rented from Landlord that certain real property located in Palm Beach County, Florida, as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Premises”), and the rights, easements and privileges granted to Tenant in the Lease.

2. The term of the Lease shall commence on _____, ____ (the “Commencement Date”) and shall expire at 12:00 Midnight on the ninety-ninth (99th) anniversary of the Commencement Date, unless sooner terminated as set forth in the Lease.

3. Pursuant to Florida Statutes Section 713.10 (2023), notice is hereby given that the Lease includes the following provision:

Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant.

4. For all other terms and provisions of the Lease, reference is hereby made to the Lease itself, and all persons are hereby placed on notice of the existence of the Lease and of its terms and provisions. The Lease and exhibits thereto are hereby incorporated by reference in this Memorandum. In the event of any conflict between the provisions of this Memorandum and the Lease, the provisions of the Lease shall govern, control and prevail.

5. Upon the expiration or earlier termination of the Lease for any reason whatsoever, Landlord shall be entitled to unilaterally execute and record a termination of this Memorandum which shall terminate and release this Memorandum. Tenant acknowledges and agrees that Tenant shall not be required to join in or execute such termination and that such termination, as executed only by Landlord, shall be effective to terminate this Memorandum without the joinder or execution by Tenant.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be duly executed and sealed as of the date first above written.

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this ____ day of _____, 2024, by _____ as Mayor of the Town of Lake Park, Florida, a Florida municipal corporation, on behalf of the Town. He/She is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public
My Commission Expires:

[SIGNATURES CONTINUE ON NEXT PAGE]

Witnesses:

TENANT:

_____ By: _____
 Print Name: _____ Print Name: _____
 Title: _____

 Print Name: _____

STATE OF _____)
)SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of [__] physical presence or [__] online notarization this ____ day of _____, 2024, by _____ as a/the _____ of _____, LLC, a _____ limited liability company, on behalf of said entity. He/She is personally known to me or has produced _____ as identification.

 Print Name: _____
 Notary Public
 My Commission Expires:

EXHIBIT "A"
LEGAL DESCRIPTION

[SEE ATTACHED]

Exhibit F**Form of Non-Disturbance and Attornment Agreement**

Return to: (enclose self-addressed stamped envelope)

Name: _____

Address: _____

This Instrument Prepared by:

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**NON-DISTURBANCE AGREEMENT BY FEE MORTGAGEE
AS TO A LEASEHOLD MORTGAGE(S)**

THIS NON-DISTURBANCE AGREEMENT (this “**Agreement**”) by and between Town of Lake Park, Florida (“**Lessor**” or “**Town**”), having an address at _____, _____, having an address at _____ (“**Tenant**”), _____, having an address at _____ (“**Lender**”), and _____, having an address at _____ (“**Fee Mortgagee**”).

W I T N E S S E T H :

WHEREAS, Tenant is the lessee under that certain Ground Lease with the Lessor dated _____, as may be amended from time to time (the “**Lease**”) with respect to the “Premises” demised under the Lease; and

WHEREAS, Fee Mortgagee has extended a loan to the Town (as may be amended, modified, substituted, or replaced), referred to herein as the “**Fee Loan**.” The Fee Loan is secured by, among other things, a mortgage which encumbers the Town’s interest in the Lease and the Premises, as same may be amended from time to time, together with an assignment of leases (collectively, the “**Fee Mortgage**”); and

WHEREAS, pursuant to the terms of the Lease, Tenant has obtained and may in the future obtain certain loans (“**Loan(s)**”) from lender(s) selected by Tenant (each, together with each lender(s)’ respective successors and assigns, a “**Lender**”), which Loan(s) are and shall be secured by a leasehold mortgage(s) encumbering Tenant’s rights in and to the Lease and the Premises (“**Leasehold Mortgage**”). Notwithstanding anything herein to the contrary, any lender(s) selected by Tenant shall not become a “Lender” under this Agreement until such time as such lender has provided a Lender Notice, as provided in Section 5 of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

1. The recitations heretofore set forth are true and correct and are incorporated herein by this reference.

2. Fee Mortgagee, Town, Tenant and Lender (after the “**Lender Notice**,” as hereinafter defined, is provided for such Lender and after such Lender agrees to be bound by this Agreement) are individually a “**Party**” and collectively “**Parties**.”

3. If and as applicable, Tenant expressly acknowledges that Town has executed and delivered to Fee Mortgagee an Assignment of Leases and Rents (the “**Assignment of Leases**”), which assigns the Lease and the rent and all other sums due thereunder to Fee Mortgagee as security for the Fee Loan. For the avoidance of doubt, Fee Mortgagee expressly acknowledges and agrees that no property of any kind owned by Tenant (including, without limitation, any improvements, fixtures, personal property or other property owned by Tenant) are collateral for the Fee Loan and that Fee Mortgagee has no security interest in or pledge of any of Tenant’s property or any of its rights in the Lease (or derived therefrom other than any residual rights that the Town has to such assets commencing upon the expiration or earlier termination of the Lease or New Lease, as applicable). Tenant acknowledges that the interest of the Town under the Lease has been assigned to Fee Mortgagee solely as security for the purposes specified in said assignments, and Fee Mortgagee shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, except (i) as provided herein, or (ii) upon Fee Mortgagee exercising control over the Town’s interest in the Lease. Tenant further agrees that only upon receipt of a written notice from Fee Mortgagee of an event of default by the Town under the Fee Loan, Tenant will thereafter, if requested by Fee Mortgagee (and after Tenant notifies the Town of the request received from Fee Mortgagee), pay rent to Fee Mortgagee in accordance with the terms of the Lease. Town shall have no claim against Tenant for any amounts paid to Fee Mortgagee pursuant to any such notice. Fee Mortgagee hereby agrees that it will only send such a notice if in its good faith judgment an event of default has occurred and has not been cured. To the extent Fee Mortgagee previously sent a notice to Tenant of such event of a default requesting payment of rent be paid to Fee Mortgagee, then at such time as such event of default has been cured and the cure accepted by Fee Mortgagee, Fee Mortgagee shall notify the Tenant in writing to again pay Sublessor such rents. Notwithstanding the foregoing provisions or any other provision herein to the contrary, Tenant shall be under no obligation to pay any rent or perform any other obligation set forth in the Lease to Fee Mortgagee unless and until Tenant receives written notice

from Fee Mortgagee that the Town is in default under the Fee Loan and Fee Mortgagee is entitled to the rent under the Lease.

4. Tenant shall have the right to mortgage, assign, pledge and hypothecate its interest in the Lease to any Lender as security for Loan(s). In connection with any financing obtained by Tenant (regardless of whether structured as mortgage financing, mezzanine financing or another type of financing), Fee Mortgagee shall execute such documents Lender may reasonably request in order to facilitate such financing (“**Future Non-Disturbance Agreement**”). For the avoidance of doubt, Fee Mortgagee’s and the Town’s agreement to provide the Non-Disturbance Agreement contemplated in the Lease as referenced herein shall only be for the benefit of first lien lenders with respect to Tenant’s interests in the Lease or first lien lenders with respect to the ownership interests in Tenant and to the extent that there are any other subordinate sub-leasehold mortgages and/or subordinate liens given by Tenant as for any interest in Tenant, Fee Mortgagee and the Town shall have no obligation to provide the future Non-Disturbance Agreement to such parties.

5. Within a reasonable time after Tenant obtains a loan from Lender, Tenant shall notify the Town and Fee Mortgagee in writing (“**Lender Notice**”) of the following, to wit: (i) the name and address and other contact information of the Lender, and (ii) confirming to the Town and Fee Mortgagee that Tenant has executed and delivered to Lender the Leasehold Mortgage, if applicable, or security interest in the ownership interests in Tenant given to Lender, if applicable. Further, notwithstanding anything to the contrary contained herein, upon delivery of the Lender Notice, Lender shall be deemed to be bound by this Agreement, whereupon Lender shall be deemed to be a “Leasehold Mortgagee” and entitled to all of the protections afforded a “Leasehold Mortgagee” thereunder, as provided in this Agreement. The delivery of Lender’s Notice shall be deemed to be an agreement by such Lender of the obligations of Lender set forth herein.

6. Tenant and any Lender (to the extent it has provided a Lender Notice) shall provide Fee Mortgagee, in the manner provided for herein for giving of notices, a copy of each notice of default given to the Town in connection with the Lease, and Fee Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied any default of the Town under the Lease, so long as such remedy is completed within any notice or grace period provided under the Lease and prior to Tenant electing to terminate the Lease due to any non-monetary default. In connection with any non-monetary defaults, the Tenant hereby agrees that, provided Fee Mortgagee has commenced to cure such non-monetary default and is proceeding with commercially reasonable diligence to complete such cure, Fee Mortgagee shall have an additional period of time as may be reasonable to enable Fee Mortgagee to remedy, or cause to be remedied, any such non-monetary default in addition to the period given to the Town for remedying, or causing to be remedied, such non-monetary default, and Tenant shall accept performance by Fee Mortgagee as performance by the Town.

7. To the extent Fee Mortgagee or any other party (each a “**New Lessor**”) shall acquire the interest of the Town under the Lease, the following shall be binding upon New Lessor:

(i) So long as Tenant recognizes the New Lessor and Tenant is not in default under the Lease (beyond any period given to Tenant by the terms of the Lease to cure such default) and is paying rent to the New Lessor under the Lease, New Lessor shall not, whether in the exercise of any of its rights under the Lease or otherwise, disturb Tenant's possession of the

Premises or deprive Tenant of any right or privilege granted to or inuring to the benefit of Tenant under the Lease; nor shall Tenant be named as a party in any foreclosure proceeding except to the extent required by law.

(ii) New Lessor shall recognize and keep the Lease as a direct sublease between Tenant and New Lessor, without the necessity of executing a new lease. In such event, New Lessor shall succeed to the interest of the Town under the Lease, the Tenant shall attorn (subject to the terms of this Agreement) to the New Lessor, in each case to be effective and self-operative without the execution of any further instruments.

(iii) Notwithstanding the foregoing, upon the request of either New Lessor and/or Tenant, the other Party shall promptly execute and deliver a commercially reasonable instrument in recordable form (an "**Attornment and Recognition Agreement**") that (i) as to the Lease, evidences the foregoing attornment by Tenant to New Lessor, and (ii) evidences the recognition of the Lease as a direct Lease between New Lessor and Tenant.

(iv) At the option of the New Lessor (which may be exercised at any time after an Attornment and Recognition Agreement is executed by New Lessor and Tenant), the New Lessor may enter into a new lease with the Tenant for the Premises (a "**New Lease**"). The New Lease shall contain the exact same terms and conditions contained in the Lease, whereupon the New Lease shall replace the Lease and be deemed a replacement Lease between Tenant and the New Lessor, and a new Non-Disturbance Agreement (similar in form to this Agreement as to such New Lease) shall be executed by New Lessor and Tenant.

(v) After New Lessor, or its successors and assigns, shall succeed to the interest of the Town under the Lease (or enter into a New Lease), New Lessor and Tenant, or their respective successors and assigns, shall be bound to each other under all of the terms, covenants and conditions of each of the Lease or New Lease, if applicable, and Tenant and New Lessor shall, from and after such succession by New Lessor to the interest of the Town under each of the Lease (or the entry of New Lease, if applicable) shall each have the same remedies against each other, or their respective successors and assigns, for the breach of any agreement or covenant or duty contained in each of the Lease or New Lease, if applicable, might have had against the other under the Lease as if such parties had been the original lessor or lessee (as applicable) under the Lease, provided, however, notwithstanding anything in the Lease (or New Lease, if applicable) or in this Agreement to the contrary, New Lessor, its successors and assigns, shall not be:

a. bound by any rent, additional rent or other amounts which Tenant might have paid for more than the current month except the most recent payment of rent paid by Tenant as required under the Lease, or to the extent such money was actually received by New Lessor; or

b. accountable for any money deposited with Lessor for any matter, including, capital improvement reserves, except to the extent such money was actually received by New Lessor; or

c. liable for any indemnities of the Town under the Lease for any period prior to New Lessor becoming the lessor under the Lease or New Lease; or

d. liable for any act or omission of the Town (or its members, officers, managers, employees, contractors, or agents) that occurred prior to such party becoming the New Lessor (and additionally, Tenant agrees that any such act or omission is not a defense or excuse to Tenant's continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease; or

e. liable for the Town's breach of any agreement or covenant or duty contained in the Lease which occurred prior to the date the New Lessor succeeded to the interest of the Town (and additionally, Tenant agrees that no such breach is a defense or excuse to its continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease.

Except as provided in this Agreement, Lessor and Tenant shall have their respective rights or remedies available to it under the Lease (or comparable provisions in the New Lease).

(vi) New Lessor shall, in the manner provided for herein for giving of notices, provide promptly to the Lender (to the extent it has provided a Lender Notice) a copy of each notice of default given by New Lessor to the Tenant in connection with the Lease or New Lease, if applicable.

(vii) Lender shall have the right, but not an obligation, to remedy or cause to be remedied any default of Tenant so long as such remedy is completed within any notice or grace period provided under the Lease or New Lease, if applicable, to Tenant as extended if Lender is diligently pursuing the completion of a non-monetary default of Tenant, as such extension is permitted under the Lease or New Lease, if applicable, and New Lessor shall accept performance by the Lender as performance by the Tenant under the Lease or New Lease, if applicable. Provided Lender satisfies the requirements of this Paragraph 7, any defaults by Tenant of any covenants and agreements which are not within the reasonable power of Lender or any nominee to perform shall not be enforced by New Lessor against Lender (but may be enforced against the Tenant), provided the same shall not be deemed to be a waiver of such obligations from and after the date Lender or its nominee acquires Tenant's interest in the Lease or New Lease, if applicable, or the interest in the Tenant, as applicable.

(viii) In case of a default by the Tenant under the Lease or New Lease, if applicable, beyond any applicable notice and cure period, other than a default in the payment of money and under such circumstances New Lessor having the right to terminate after all cure periods, if any, have expired, the New Lessor shall take no action to effect a termination of the Lease or New Lease, if applicable, by service of a notice or otherwise, without first giving Lender (to the extent it has provided a Lender Notice) a commercially reasonable time within which to either:

a. obtain possession of the Premises and the Tenant's improvements located thereon ("**Improvements**") (including possession by a receiver) and to cure such default in case of a default which is within the power of the Lender to cure, it being understood that the payment of money is within the Lender's power to cure, when such Lender has obtained possession of the Premises and the Improvements; or

b. initiate and complete foreclosure proceedings or otherwise acquire Tenant's leasehold interest under the Lease (or New Lease, as applicable), provided the New Lessor may seek to intervene and Lender consents to such intervention in said foreclosure proceedings and obtain an order authorizing the Lender to commence to cure such default as described by New Lessor and, if such order is obtained, Lender shall have a reasonable time thereafter to proceed diligently to cure such non-monetary defaults within its control to cure and to cure all monetary defaults and the New Lessor will not need to wait until the foreclosure proceedings are concluded. Upon issuance of such orders in the judicial proceedings and if Lender fails to diligently proceed to cure such default, New Lessor has the right to enter the Premises and cure such default, the cost and expenses of which shall be added to the Lease or New Lease, if applicable, as additional rent. Lender shall diligently proceed with the appointment of a receiver to operate and maintain the Premises under the Lease or New Lease, if applicable.

The provisions of Paragraph 7(viii) above are conditioned on the following: Lender, within the forty-five (45) days of receipt of a notice of default under the Lease or New Lease, if applicable, shall (i) notify New Lessor of its election to proceed with due diligence to promptly acquire possession of the Premises and any Improvements or to foreclose its Leasehold Mortgage or otherwise to extinguish Tenant's interest in the Lease or New Lease, if applicable; and (ii) deliver to New Lessor an instrument in writing duly executed and acknowledged, whereby the Lender agrees that (x) during the period Lender is enforcing its remedies and/or during the pendency of any foreclosure or other proceeding and until the interest of Tenant in the Lease or New Lease, if applicable, shall terminate, as the case may be, it will pay or cause to be paid to New Lessor (on behalf of Tenant) all monetary obligations of Tenant including rent (based on gross revenue Lender is able to collect), payment of taxes and insurance then due and from time to time becoming due under the Lease or New Lease, if applicable, which is to be remitted to New Lessor giving credit, however, for any net income actually collected by New Lessor (as applicable) in connection with the Premises, and (y) if delivery of possession of the Premises and the Improvements shall be made to Lender or its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all covenants and agreements contained in the Lease or New Lease, if applicable, on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid except such covenants and agreements which are not within the reasonable power of the Lender or such nominee to perform but the payment of rent (based on gross revenue Lender is able to collect), taxes and insurance shall be deemed activity within the power of the Lender or its nominee to perform. Upon such extinguishment of Tenant's interest in the Lease or New Lease, if applicable, and such performance by such holder or such nominee, or by any purchaser of the Tenant's interest in the Lease pursuant to any foreclosure proceedings, New Lessor's rights to serve notice of election to end the Term of the Lease or New Lease, if applicable, based on any non-monetary default which is not within the

power of such holder or nominee or such purchaser to perform, shall be deemed to be and shall be waived. If prior to any sale pursuant to any proceedings brought in foreclosure of the Loan(s), or if, prior to the date on which Tenant's interest in the Lease or New Lease, if applicable, shall otherwise be extinguished, the default in respect of which New Lessor shall have given notice shall have been remedied and possession of the Premises and the Improvements restored to Tenant, the obligations of the Lender pursuant to the instrument referred to in clause (x) of this paragraph shall be null and void (subject to a new right to cure for other defaults) and of no further force and effect. Nothing herein contained shall affect the right of New Lessor, upon the subsequent occurrence of any default by Tenant, to exercise any right or remedy reserved in the Lease or New Lease, if applicable, to New Lessor, subject to the rights of the Lender pursuant to this Agreement with respect to such default. Notwithstanding anything contained in this Agreement to the contrary, New Lessor shall not be required to waive monetary defaults such as payment of rent, taxes, insurance and other financial obligations under the Lease or New Lease, if applicable, giving credit, however, for any net income actually collected by New Lessor in connection with the Premises. Further, both parties agree payment of rent (based on gross rent Lender is able to collect), and payment of taxes, insurance and other monetary obligations shall never be deemed "not within the reasonable power of the Lender or such nominee to perform" or a default not susceptible of being cured and upon Lender or its designee becoming the Tenant, such party shall perform the deferred maintenance and other obligations within its reasonable control to the extent such matters could not be cured previously.

(ix) Upon (a) a foreclosure or deed in lieu of foreclosure, whereby the Tenant's interest in the Lease or New Lease, if applicable, is transferred to the Lender or foreclosure of ownership interests in Tenant or a transfer in lieu of foreclosure of ownership interests in Tenant, or its first assignee or (b) if such Lender is unable (despite commercially reasonable efforts to do so) to perform the cure within its cure period as provided in Section 7 (xi) and the Lease or New Lease, if applicable, is terminated or (c) if New Lessor shall give notice thereof to the Lender and in either of such cases, upon written request by the Lender given to New Lessor within thirty (30) days after such foreclosure (as provided in Section 7(xii)(a)) or the notice from New Lessor to the Lender of the termination of the Lease or New Lease, if applicable (as provided in Section 7(xii)(b)) to enter a "New Lease" (as hereinafter defined), New Lessor shall enter into and deliver a new lease ("**New Lease**") of the Premises with the Lender or its designee for the remainder of the term of the Lease or New Lease, if applicable, upon the exact same terms and conditions as contained in the Lease or New Lease, if applicable, including all right to the extensions thereof and dated as of the date of termination of the Lease or New Lease, if applicable, and convey to the Lender (or its designee) by quit claim bill of sale, a term of years in and to the Improvements, reserving to New Lessor the reversion of title to the Improvements upon the termination of the New Lease. The estate of the Lender (or its designee) as lessee under the New Lease shall have priority equal to the estate of the Tenant under the Lease or New Lease, if applicable (that is, there shall be no charge, lien or burden upon the Premises prior to or superior to the estate granted by such New Lease which was not prior to or superior to the estate of the Tenant under the Lease or New Lease, if applicable, as of the date immediately preceding the date the Lease or New Lease, if applicable, went in default. The quit claim bill of sale to the Improvements shall recite that the grantee holds title to the Improvements only so long as the New Lease shall continue in full force and effect, that upon termination of the New Lease, title to the Improvements shall revert to New Lessor automatically without payment. Nothing herein contained shall be deemed to impose any

obligation upon New Lessor or to cause the delivery of physical possession of the Premises and the Improvements to the Lender or its designee or to disavow any recognition of the Lease or New Lease, if applicable, or the rights of the Tenant pursuant to the terms of the Lease or New Lease, if applicable. The Lender or its designee shall pay all reasonable expenses, including reasonable attorneys' fees, incident to the execution and delivery of such New Lease and quit claim bill of sale to the extent requested by the Lender. If there be more than one (1) Leasehold Mortgage, the right to request and obtain a New Lease shall be limited solely to the Lender having the highest priority lien. New Lessor reserves the right to require a written legal opinion, at Lender's expense, as to whether or not such Leasehold Mortgage is a first lien on the Tenant's rights under the Lease or New Lease, if applicable.

However, if the Leasehold Mortgage is foreclosed, the purchaser who shall have acquired the Tenant's leasehold estate at the foreclosure sale shall execute and deliver such evidence of acquiring such leasehold estate to New Lessor. If Lender is the purchaser, it may assign its interest in the Lease or New Lease, if applicable, to any person, firm, corporation or entity designated by it who satisfies the minimum standard as expressly specified in the Lease or New Lease, if applicable, and such assignee shall execute and deliver such assignment to New Lessor in form reasonably acceptable to New Lessor, whereupon the Lender shall have no liability or obligation thereunder.

8. (a) Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable) the Town and Tenant, shall not consent to or accept any voluntary cancellation, termination or surrender of the Lease (other than to enforce a default thereunder not cured within the applicable cure period). Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable), which consent shall not be unreasonably withheld, conditioned or delayed, the Town and Tenant shall not, in any material respect, modify or amend the Lease or New Lease, if applicable, which materially changes the term, the rent, or otherwise materially increases the obligations of the Town or material decreases the obligations of Tenant under the Lease or New Lease, if applicable (a "**Lease Modification**"). In the event the Town sends its request for approval of a Lease Modification to Fee Mortgagee as a "Time Sensitive Request of Lender", then the Lender shall be deemed to have approved such request if the Fee Mortgagee does not disapprove same and specify the basis for such disapproval within twenty (20) days of request.

(b) Without the prior written consent of Lender (to the extent it has provided a Lender Notice and while its lien encumbers any Tenant interest in the Lease or New Lease, if applicable), the Town and Tenant shall not (i) consent to or accept any violation, cancellation, termination or surrender of the Lease or New Lease, if applicable (other than to enforce a default thereunder not cured within the applicable cure period (but subject to the terms hereof)), or (ii) modify or amend the Lease or New Lease, if applicable, in any material manner which changes the term, the rent, or otherwise materially increases the obligations of Tenant or material decreases the obligations of the Town or the rights of Tenant under the Lease or New Lease, if applicable (in each case, a "**Material Lease Modification**"). In the event the Town or Tenant sends a request to Lender for approval of a Material Lease Modification, any such consent of Lender shall not be

unreasonably withheld and shall be subject to the terms and provisions attached hereto as Exhibit A.

9. The Town and New Lessor agree that the restrictions on "Assignment" (as defined in the Lease or New Lease, if applicable) do not apply to either (a) an assignment of the Leasehold interest of Tenant as it relates to Lender (to the extent it has provided a Lender Notice) pursuant to the Leasehold Mortgage or the foreclosure of the Leasehold Mortgage or assignment in lieu of the foreclosure of the Leasehold Mortgage or (b) a pledge of ownership interests in the Tenant as it relates to Lender by its owner or the foreclosure on the ownership interests of Tenant or the assignment in lieu of the foreclosure of ownership interests in the Tenant, provided however, any subsequent assignment by Lender to a third party shall be subject to compliance with the minimum standards relating to an assignee as specified in the Lease or New Lease, if applicable.

10. The parties acknowledge that any Loan(s) obtained by Tenant are leasehold security interests on the Tenant's interest in the Premises and do not encumber or subordinate the fee simple title of the Town, the leasehold interest of Lessor, or any lien and/or leasehold interest held by Fee Mortgagee.

11. Any notice required or permitted to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified mail, postage prepaid, return receipt requested. Such written notice shall be addressed as follows:

As to Fee Mortgagee:

With a copy to:

As to Town:

With a copy to:

As to Lender:

The name and address of the Lender and its
representatives as set forth in the Lender Notice

As to Tenant:

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid and shall be deemed delivered three (3) business days after being properly mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, notices, requests or demands or other communications referred to in this Agreement may be sent by email (except that requests for Material Lease Modification approvals whereby the provisions of Exhibit A would be applicable must always be sent by certified mail return receipt requested or a nationally recognized delivery service such as Federal Express in addition to email) or by nationally recognized delivery service such as Federal Express, but shall only be deemed to have been given when received

12. This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by all Parties to this Agreement.

13. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed an original and all of which shall be deemed one and the same instrument. Facsimile transmission signatures of this Agreement shall be deemed to be original signatures.

14. This Agreement is governed by Florida law and Palm Beach County, Florida is the agreed upon venue.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signature Pages to Follow]

WITNESSES:

LESSOR:

Town of Lake Park Florida

_____ By: _____
 Print Name: _____ Name: _____
 _____ Title: _____
 Print Name: _____ Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2024.

Notary Public

Typed, print d or stamped name of Notary Public

My Commission Expires:

WITNESSES:

TENANT:

 Print Name: _____

By: _____

Name: _____

Title: _____

 Print Name: _____

Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2024.

 Notary Public

 Typed, print d or stamped name of Notary Public

My Commission Expires:

LENDER:

Date:

537

FEE MORTGAGEE:

Date:

STATE OF _____)
) SS:
COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day
of _____, 2024

Notary Public

Typed, print d or stamped name of Notary Public

My Commission Expires:

Exhibit A

If Tenant makes a written request of Lender in accordance with the terms of this Agreement to make a material modification or amendment to the Lease, accompanied by all such background information and explanations as may be reasonably necessary for Lender to determine whether to consent to or approve the request, and does not receive a consent, approval or rejection from Lender within five (5) business days after Lender's receipt of such request, then Tenant may provide Lender with a second written notice of any such request, with a copy of such first request, and if such second written notice includes, printed in capital letters of boldface type and at least 12 point font, a legend substantially to the following effect:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS (OR LONGER PERIOD AS PROVIDED IN THAT CERTAIN NON-DISTURBANCE AGREEMENT DATED AS OF _____) FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED CONSENT OR APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE ADDRESSOR.”

and if the foregoing legend is included by the Tenant in the second written request to Lender, such request shall be deemed to have approved or consented to the item for which Tenant sought Lender's consent or approval for all purposes hereunder unless Lender denies the such request within ten (10) calendar days of Lender's receipt of such second written request; provided, however, that if Lender in writing notifies Tenant (including the basis for the need for additional time) within such ten (10) calendar day period that the nature of the request is such that more than ten (10) calendar days are required in order for the Lender to properly assess the request and respond to Tenant (including without limitation, as a result of loan approval authority for the requested change being a prerequisite to Lender's and/or any Loan participant's response to the request), then such period shall be extended for up to an additional twenty (20) calendar days (i.e. a total of thirty (30) calendar days after Lender's receipt of the second written request) for Lender and/or any Loan participant to properly assess the request and respond to Tenant so long as Lender and/or such Loan participant(s) have commenced their assessment within such ten (10) calendar days period and thereafter diligently conducts their review and determination of whether or not to approve or consent to such request.



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024

Agenda Item No.

Agenda Title: Resolution Authorizing the Mayor to Execute the Ground Lease between the Town of Lake Park and FD P3 LP Restaurant, LLC for the Marina Restaurant Component of the P3 Project for the Enhancement of the Lake Park Harbor Marina

[] SPECIAL PRESENTATION/REPORTS [] CONSENT AGENDA
 [] BOARD APPOINTMENT [] OLD BUSINESS
 [] PUBLIC HEARING ORDINANCE ON FIRST READING
 [x] NEW BUSINESS
 [] OTHER: _____

Approved by Town Manager _____

Bambi McKibbon-Turner

Date: _____

Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
 ou=Assistant Town Manager/Human Resources Director,
 email=btturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 10:36:53 -0400

Bambi McKibbon-Turner, Assistant Town Manager/Human Resources Director

Name/Title

Originating Department: Town Manager	Costs: \$ 0.00 Funding Source: Acct. # [] Finance _____	<u>Attachment:</u> Resolution and Copy of the Ground Lease between the Town of Lake Park and FD P3 LP Restaurant, LLC for the Marina Restaurant Component
Advertised: Date: _____ Paper: _____ [x] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	<u>Yes I have notified everyone: BMT</u> OR Not applicable in this case ____ Please initial one.

Summary Explanation/Background:

At its August 2, 2023 meeting, the Town Commission approved the execution of the P3 Comprehensive Agreement (the “Agreement”) between the Town of Lake Park and Forest Development P3 LPM, LLC (collectively “the parties”) for the enhancement of the Lake Park Harbor Marina.

Pursuant to Article 4 of the Agreement, the parties are required to enter into four separate ground leases for components of the enhancement project (i.e., the Hotel Component, the Boat Storage Component, the Public Marina Component, and the Marina Restaurant Component). The purpose of this agenda item is to approve and authorize the Mayor to execute the ground lease for the Marina Restaurant Component.

The Marina Restaurant Component ground lease is attached as an exhibit to the attached Resolution.

Staff recommends approval.

Recommended Motion: I move to approve Resolution _____.

RESOLUTION 35-05-24

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A GROUND LEASE WITH FD P3 LP RESTAURANT, LLC FOR THE PARCELS OF LAND UPON WHICH THE RESTAURANT COMPONENT OF THE QUALIFYING PROJECT IS TO BE LOCATED AS PART OF THE RE-DEVELOPMENT OF THE LAKE PARK HARBOR MARINA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes and

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the "Developer"), is developing a Qualifying Project involving the redevelopment of six (6) parcels of land owned by the Town (the "**Land**"), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, all of which are part of the Lake Park Harbor Marina (the "**Marina**"); and

WHEREAS, in accordance with Fla. Stat. §255.065, the Town and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (the "Comprehensive Agreement"), memorializing their respective rights and obligations with respect to the development of the Qualifying Project; and

WHEREAS, pursuant to the Comprehensive Agreement, the Town and Developer have agreed that Town and four special purpose entities formed by Developer will enter into four separate ground leases for portions of the Marina, known as the "Hotel

Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, in accordance with the Comprehensive Agreement, a 99 year Ground Lease (“Lease”) has been negotiated between FD P3 LP RESTAURANT, LLC and the Town for the parcels of land upon which the Restaurant Component of the Qualifying Project is to be located.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS

Section 1. The whereas clauses are hereby incorporated herein.

Section 2. The Town Commission hereby approves a Ground Lease for the Restaurant Component Ground Lease with FD P3 LP RESTAURANT, LLC, a copy of which is attached hereto and incorporated herein as Exhibit 1.

Section 3. The mayor is hereby authorized and directed to execute the Ground Lease for the parcels upon which the Restaurant Component of the Qualifying Project will be located.

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

GROUND LEASE
(Marina Restaurant Component)

THIS GROUND LEASE (this “**Lease**”), dated as of _____, 2024 (the “**Effective Date**”), is entered into by and between the **TOWN OF LAKE PARK, FLORIDA**, a Florida municipal corporation (“**Landlord**”), and **FD P3 LP RESTAURANT, LLC**, a Florida limited liability company (“**Tenant**”) (collectively, the “**Parties**” and individually, a “**Party**”).

WHEREAS, in accordance with Florida Statutes §255.065, Forest Development P3 LPM, LLC, a Florida limited liability company (the “**Developer**”), an affiliate of Tenant, submitted to Landlord an unsolicited proposal for a Qualifying Project (the “**Proposal for Redevelopment**”) involving the redevelopment of six (6) parcels of land owned by Landlord (the “**Land**”), comprising approximately +/-12.01 acres generally located on the intracoastal waterway east of Federal Highway and north of Silver Beach Road in the Town of Lake Park, Florida, and commonly known as Lake Park Harbor Marina (the “**Marina**”); and

WHEREAS, the Town Commission selected the Developer’s Proposal for Redevelopment; and

WHEREAS, in accordance with said §255.065, Landlord and Developer entered into that certain Comprehensive Agreement dated as of August 2, 2023 (as the same may be amended or supplemented, collectively, the “**Comprehensive Agreement**”), memorializing their respective rights and obligations with respect to the redevelopment of the Marina; and

WHEREAS, all capitalized terms used but not otherwise defined in this Lease shall have the respective meanings ascribed to them in the Comprehensive Agreement; and

WHEREAS, pursuant to the Comprehensive Agreement, Landlord and Developer have agreed that Landlord and four (4) special purpose entities formed by Developer shall enter into four (4) separate ground leases for portions of the Marina, on which will be developed the “Hotel Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (as defined in the Comprehensive Agreement); and

WHEREAS, in accordance with the Comprehensive Agreement, Landlord and Tenant desire to enter into this Lease to document Tenant’s lease from Landlord of a portion of the Marina hereinafter described on which will be developed the Marina Restaurant Component, all in accordance with the terms and conditions hereinafter set out.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **DEMISE.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all of the area shown on the plan attached hereto as **Exhibit A** and made a part hereof (the “**Site Plan**”), and more particularly described on **Exhibit B**, attached hereto and made a part

hereof, together with all appurtenant easements and rights thereto (collectively, the “**Premises**”). Landlord and Tenant hereby acknowledge and agree that this Lease shall be subject to the terms, conditions and provisions of the Comprehensive Agreement only to the extent the same pertain to the Marina Restaurant Component and that only a default under the terms of the Comprehensive Agreement that pertain to the Marina Restaurant Component shall constitute a default under this Lease.

2. **TERM.** The term of this Lease (the “**Term**”) shall be ninety-nine (99) years, commencing on the later of (i) the Effective Date; (ii) the earlier of (A) the date of the modification or termination of the Deed Restrictions and Reverter Clauses to Landlord’s and Developer’s reasonable satisfaction, and (B) the date that Developer notifies Landlord in writing that it intends to proceed with the Project even if the Deed Restrictions and Reverter Clauses are not fully terminated; (iii) August 2, 2025 (the “**Commencement Date**”). Notwithstanding the foregoing, in the event that the Deed Restrictions and Reverter Clauses have not been terminated or modified to the Developer’s reasonable satisfaction and the Developer has not notified Landlord in writing that it intends to proceed with the Project despite the fact that the Deed Restrictions and Reverter Clauses have not been fully terminated, Tenant shall have the right to terminate this Lease by written notice to Landlord on or before August 2, 2025.

3. **LEASE PAYMENTS.** As consideration for Landlord’s execution of this Lease with Tenant, Tenant shall make payments to Landlord in accordance with the schedule attached hereto as **Exhibit C** (the “**Lease Payments**”). During the Term, Tenant shall also be responsible for all real estate taxes (including ad valorem taxes and non-ad valorem assessments) assessed with respect to the Premises and for all expenses incurred in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises. In addition, Tenant shall pay or cause the Developer to pay the portion of the P3 Assessment Fee in the total amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) and the Building Permit Fee (as such terms are defined in the Comprehensive Agreement) applicable to the Marina Restaurant Component, which payments shall be made on or before August 2, 2024 in accordance with the Comprehensive Agreement. Except as otherwise expressly set forth in this Lease, Landlord shall not be responsible for any costs, expenses, or charges of any kind or nature respecting the Premises and Landlord shall not be required to render any services of any kind to Tenant or to the Premises. Landlord shall receive the Lease Payments free and clear of any and all impositions, taxes, liens, charges, deductions or expenses of any nature whatsoever in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises.

4. **IMPROVEMENTS.** Tenant hereby agrees to develop the Marina Restaurant Component on the Premises in accordance with the terms and conditions of the Comprehensive Agreement, to the extent such terms and conditions apply to the Marina Restaurant Component. Tenant covenants that the construction of all improvements at the Premises (the “**Improvements**”) shall be at Tenant’s sole cost and expense and in accordance with all applicable legal requirements. Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant. Tenant shall notify any contractor

engaged in the construction of the Improvements of the foregoing, and the knowing or willful failure of the Tenant to provide such notice to the contractor(s) shall render the contract between the Tenant and the contractor voidable at the option of the contractor. In the event any such lien is filed against the fee simple interest in the Premises as a result of any construction thereon by Tenant or on Tenant's behalf, then and in that event, Tenant shall cause said lien to be discharged or bonded over within thirty (30) days of Tenant's actual knowledge of same. The failure to do so shall, at the option of Landlord, constitute a breach of this Lease. If Tenant fails to have such lien or claim for lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, shall have the right to pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's reasonable expenses and attorneys' fees.

Subject to the terms and conditions of this Lease, until the expiration or earlier termination of this Lease, (a) all Improvements shall be and remain the property of Tenant, and (b) Tenant shall have the rights and benefits of ownership of the Improvements, including, without limitation the right to claim depreciation of the Improvements for tax purposes.

5. USE OF PREMISES. It is expressly agreed that the Premises may be used during the Term only for any purposes permitted pursuant to the Comprehensive Agreement or as may permitted by the applicable governmental authority and may not use the Premises for any purpose in violation of the Deed Restrictions and Reverter Clauses to the extent the same have not been amended or terminated of record. It is the obligation of the Developer to work out alternative locations that would provide for seamless operation of current users in that location during construction. Tenant, its agents, employees, customers, and invitees shall have free and unobstructed right to use the Premises for such purposes. Tenant shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the Improvements, or any activity or condition on or at the Premises. Tenant shall have access to the Premises twenty-four (24) hours per day, 365 days per year. Tenant shall have the right to place signs at the Premises provided such signs comply with the local ordinances and regulations. Upon the expiration of the Term, upon Landlord's request, Tenant shall remove all signage and shall restore and repair any damage caused by the installation or removal of such signs.

6. MAINTENANCE AND REPAIR. Throughout the Term, Tenant, at its sole cost and expense, shall (a) keep and maintain the Premises including all Improvements of every kind thereon and appurtenances thereto, in good order and condition, and (b) make such repairs, replacements and renewals (collectively, "**Repairs**") to the Premises as may be necessary or appropriate to keep and maintain the Premises in good order and condition, whether such Repairs are ordinary or extraordinary, foreseen or unforeseen. Without limiting the generality of the foregoing, Tenant shall keep and maintain all portions of the Premises and all driveways, sidewalks, parking areas, curbs and access ways adjoining the Premises in a clean and orderly condition, and shall keep and maintain all open areas of the Premises in a neat and orderly condition and perform all necessary landscaping work. All Repairs shall be promptly made with materials and equipment, which are at least equal in quality to those in place. Landlord shall not be obligated to make any repairs or replacements of any kind, nature, or description, whatsoever, to the Premises or the Improvements thereon.

7. INDEMNIFICATION.

(a) Subject to the subrogation provisions of this Lease, Tenant agrees to indemnify and hold Landlord and its former and current elected and appointed officials, agents, consultants and employees (collectively, “**Landlord Parties**”) harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys’ fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, any Landlord Party arising out of, from, or in any way connected with or arising from the negligence, recklessness, or intentional wrongful misconduct of Tenant in the performance of its obligations under this Lease. Notwithstanding the foregoing, Tenant shall not be required to indemnify any Landlord Party with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence and/or willful misconduct of such Landlord Party. To the extent this indemnification clause or any other indemnification clause in this Lease is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties’ intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

(b) Tenant shall not have any obligation to indemnify or defend the Landlord Parties against any claims brought against any Landlord Party by any third party challenging: (i) Landlord’s legal authority to lease all or any portion of the Premises; (ii) the Town Commission’s judgment in leasing all or any portion of the Premises; or (iii) Landlord’s decision to enter into this Lease or the terms and provisions of this Lease, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. Provided however, that if any third party brings any claims against Landlord and Tenant, Tenant shall have the responsibility to defend the allegations against it. The provisions of this Section shall survive the expiration or earlier termination of this Lease. Any tort liability to which Landlord is exposed under this Lease shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section § 768.28, Florida Statutes, as it may be amended. Landlord expressly does not waive any of its rights and immunities under § 768.25.

8. TAXES. During the Term, Tenant shall assume full responsibility for and shall pay all taxes and assessments that accrue to the Premises or to the Improvements thereon, including sales and property taxes (including ad valorem taxes and non-ad valorem assessments). Tenant shall obtain, if available, a separate tax billing or assessment for the Premises, and Tenant shall pay the ad valorem real property taxes attributable to the Premises only. If a separate billing or assessment for the Premises is not available, Tenant shall pay its pro rata share of the cost incurred by Landlord for real property taxes upon the Project. Tenant agrees to reimburse Landlord within thirty (30) days after receipt of an itemized statement showing the pro rata amount due by Tenant.

In no event shall Tenant be obligated to pay any of Landlord’s administrative fees relating to taxes nor shall Tenant be obligated to pay any interest or penalties imposed for late payment or otherwise unless caused by Tenant. Any real property taxes shall be apportioned so that Tenant shall pay only that portion of real property taxes or installments thereof as fall within the Term.

Tenant shall not be obligated to pay any income tax, excise tax or other similar tax or charge, or inheritance, franchise, capital levy transfer, estate, succession or other similar tax or charge that may be payable by or chargeable to Landlord under any present or future law of the United States or the state in which the Premises are located or imposed by any political or taxing subdivision thereof. Tenant shall have the right, by appropriate proceedings, to protest or contest any assessment or reassessment for real property taxes, or any special assessment, or the validity of either, or of any change in assessments or the tax rate and Landlord agrees to reasonably cooperate with Tenant in any such protest or contest. If Landlord is unwilling to pursue such protest or contest, then Tenant may do so in Landlord's name at Tenant's expense. Landlord agrees not to initiate or endorse any action or application which would increase Tenant's monetary obligations under this Section.

9. INSURANCE; WAIVER OF SUBROGATION. During the Term, Tenant shall comply with all of the insurance requirements imposed upon the Developer pursuant to the Comprehensive Agreement only to the extent the same are applicable to the Marina Restaurant Component.

Landlord and Tenant, for themselves and their respective insurers, hereby release each other of and from any and all claims, demands, actions and causes of action, (including, without limitation, subrogation claims), for loss or damage to their respective property located within or upon, or constituting a part of the Premises, even if the loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies or, in the case of Landlord, if Landlord elects to self-insure. Landlord and Tenant shall each cause each insurance policy obtained by it to provide that each insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy. The foregoing waiver of subrogation shall also apply in the event that Landlord elects to self-insure.

10. UTILITIES. During the Term, Tenant, at its sole cost and expense, shall take such action as may be necessary to procure the utility services required for Tenant's operation of the Premises, including, without limitation, making arrangements to extend and connect utility lines to and within the Premises. Tenant shall pay all charges for utility services used on the Premises during the Term. At Landlord's request from time to time (but no more frequently than twice in any calendar year), Tenant shall deliver to Landlord receipts or other evidence satisfactory to Landlord indicating the timely payment of utility expenses.

Landlord makes no representation or warranty with respect to the availability or sufficiency of any utility service to the Premises. Landlord is not required to furnish any utility services to Tenant and shall not be liable for the failure of any utility services or for the untenability of the Premises or other damage or loss resulting from the unavailability, interruption, inadequacy or termination of, any utility services.

11. DEFAULT. The following conditions shall be considered a "**Default**" by Tenant hereunder:

(a) Tenant's failure to pay any monetary sum as provided in this Lease which continues for thirty (30) days following Tenant's receipt of notice from Landlord to that effect (a "**Monetary Default**"); and

(b) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Lease that Tenant must observe or perform, other than a Monetary Default, where the failure continues for a period of ninety (90) days after Tenant's receipt of written notice from Landlord; provided, however, that if the nature of the obligation that Tenant has failed to perform is such that more than ninety (90) are reasonably required for its cure, a Default will not occur so long as Tenant commences the cure within such ninety (90)-day period and continuously prosecutes the cure to completion (a "**Non-Monetary Default**")

If a Monetary Default occurs hereunder, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Marina Restaurant Component), Landlord may, subject to any and all cure and notice provisions contained in this Lease, do the following: (i) commence a proceeding to terminate this Lease, or (ii) repossess the Premises, with or without terminating this Lease.

If a Non-Monetary Default occurs and is continuing, then in addition to any other lawful or equitable right or remedy which Landlord may have, including any rights or remedies available to Landlord under the Comprehensive Agreement (to the extent applicable to the Marina Restaurant Component), Landlord shall have the right, in its sole election, then, or at any time thereafter while such Default shall continue to (i) remedy the same and charge Tenant for the reasonable costs thereof (including reasonable interest thereon), (ii) sue for specific performance of Tenant's obligations under this Lease; or (iii) commence a proceeding to terminate this Lease.

In the event of the occurrence of any Landlord's default as is detailed in this Lease which is not cured within sixty (60) days of Tenant's notice to Landlord, or such longer period of time as may be necessary to cure defaults which are not subject to being cured within such sixty (60) day period, Tenant shall have the right, in its sole election, then, or at any time thereafter while such Landlord's default shall continue to (i) remedy the same and charge Landlord for the costs thereof (including reasonable interest thereon), or (ii) sue for specific performance of Landlord's obligations under this Lease; or (iii) such other remedy as may be available at law or in equity.

Subject to the terms of this Section, all rights and remedies of Landlord and Tenant are cumulative, and the exercise of any one shall not be an election excluding Landlord or Tenant at any other time from exercising a different or inconsistent remedy. No waiver by Landlord or Tenant of any covenant or condition shall be deemed to imply or constitute a further waiver of the same at a later time.

12. CASUALTY.

(a) General. If at any time during the Term, any Improvements are damaged or destroyed by fire or other casualty (a "**Casualty**"), Tenant shall promptly give written notice thereof to Landlord. Tenant's obligations under this Lease shall not be affected by any Casualty except as provided in this Section. Lease Payments shall not abate during the period when the

Premises are not usable by Tenant due to damage or destruction, provided, however, Tenant shall receive a credit against the Lease Payments for the relevant period in an amount equal to any insurance proceeds actually received by Landlord with respect to such period.

(b) Restoration.

(i) Upon the occurrence of a Casualty, unless this Lease is terminated pursuant to Section 12(c), Tenant shall proceed, at its sole cost and expense and with commercially reasonable diligence, to carry out or cause to be carried out any necessary demolition and debris removal and to repair, restore, replace or rebuild the Improvements as nearly as reasonably practical to their condition, quality and character immediately prior to such damage or destruction, with such changes or alterations as may be approved by Landlord or as may be required by Governmental Authority (the “**Restoration**”).

(ii) All insurance proceeds shall be applied first to reimburse Tenant for the necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys’ fees and disbursements) (the “**Net Insurance Proceeds**”). The balance remaining shall be paid and applied in accordance with the provisions of this Section 12(b). In the event of a Casualty resulting in damage to the Improvements of less than \$2,000,000.00, the Net Insurance Proceeds shall be paid directly to Tenant and used by Tenant to pay the costs of the Restoration of the Improvements, subject to and in accordance with the provisions of this Section 12(b) and any Leasehold Mortgage. In the event of a Casualty resulting in damage to the Improvements of \$2,000,000.00 or more, the Net Insurance Proceeds shall be paid to the Insurance Depository (as hereinafter defined) and shall be held, invested and disbursed, subject to and in accordance with the provisions of this Section 12(b) and any leasehold mortgage. The “**Insurance Depository**” shall mean an institutional lender jointly selected by Landlord and Tenant (or if the provisions of any leasehold mortgage so provide, as selected by the holder of any Leasehold Mortgage (and may be the Leasehold Mortgagee)) to perform the functions described herein.

(iii) Subject to the terms of any Leasehold Mortgage, the Insurance Depository shall invest and reinvest the Net Insurance Proceeds in United States government securities backed by the full faith and credit of the United States government. The income from the investment of the Net Insurance Proceeds shall be part of the Net Insurance Proceeds and shall be held, invested, and disbursed in the same manner as the balance of the Net Insurance Proceeds. All reasonable costs, fees, expenses and charges of the Insurance Depository in connection with the collection, investment, administration and disbursement of the Net Insurance Proceeds shall be paid by Tenant upon demand by the Insurance Depository. In the event that Tenant shall fail to pay such costs, fees, expenses and charges upon demand, the Insurance Depository may deduct the amount thereof from the Net Insurance Proceeds.

(iv) The Insurance Depository shall disburse the Net Insurance Proceeds from time to time in accordance with requests for disbursement (each, a “**Disbursement Request**”) made by Tenant and approved by the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord. No disbursement of Net Insurance Proceeds shall be made without the prior written approval of the then Leasehold Mortgagee, or, if there is no Leasehold

Mortgagee, Landlord. Landlord shall be obligated to approve a Disbursement Request provided that Tenant has complied with the requirements of this Section.

(v) Subject to the other requirements of this Lease, Net Insurance Proceeds shall be disbursed periodically by the Insurance Depository as the Restoration progresses in amounts not exceeding 90% of the value of labor and materials incorporated into the work. The remaining 10% will be disbursed upon final completion of the Restoration.

(vi) If at any time during the course of the Restoration the then Leasehold Mortgagee, or, if there is no Leasehold Mortgagee, Landlord, reasonably determines that the undisbursed portion of the Net Insurance Proceeds will not be sufficient to complete the Restoration, Tenant shall deposit the difference, as reasonably determined by Leasehold Mortgagee or Landlord, as applicable, with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the balance of the Net Insurance Proceeds.

(vii) All Restoration work shall be performed by Tenant in accordance with the provisions of Section 4.

(viii) Except as otherwise provided in any Leasehold Mortgage or any related loan documents, in the event that (a) Tenant shall fail to commence or complete the Restoration as required by this Section or otherwise defaults in the performance of its obligations under this Section, or (b) a default beyond any applicable notice and cure periods shall occur before or during the course of the Restoration, the Net Insurance Proceeds shall be paid to and retained by Landlord.

(ix) Upon final completion of the Restoration and compliance with the requirements for the final disbursement, any excess Net Insurance Proceeds shall be paid to Tenant.

(c) Termination by Tenant.

(i) Subject to the terms of any Leasehold Mortgage or any related loan documents, upon the occurrence of Casualty during the last thirty (30) years of the Term or if at any time during the Term the Improvements are substantially destroyed and estimated cost of the Restoration would exceed one hundred ten percent (110%) of the Maximum Required Restoration Cost (as hereinafter defined), then, instead of carrying out the resulting Restoration, Tenant, at its option, may elect to terminate this Lease by written notice to Landlord given within thirty (30) days after the Casualty or the estimated cost of such Restoration shall have been determined, whichever last occurs. After making such election, Tenant shall proceed with reasonable diligence to

- (A) demolish the damaged portion of the Improvements to street grade;
- (B) remove all debris from the Premises;

(C) put the Premises in good, safe, lawful, clean and orderly condition (collectively, the “**Demolition**”). The Demolition shall be carried out at Tenant’s sole cost and expense. Upon completion of the Demolition, as certified by the architect handling the Demolition and upon payment of all Lease Payments payable under this Lease through the date of such completion, this Lease shall expire and terminate with the same force and effect as though the date of such completion were the Termination Date; and

(D) provide evidence reasonably satisfactory to Landlord that all subleases have been terminated.

The term “**substantially destroyed**” shall mean and refer to that condition where the use and occupancy of substantially all the Improvements have been materially adversely affected and the estimated cost of the resulting Restoration would exceed \$2,000,000.00. The term “**Maximum Required Restoration Cost**” shall mean and refer to the total of (i) the insurance proceeds payable in respect of any loss which is the subject of the Restoration for which such determination is to be made (excluding the proceeds of any business interruption or rent loss insurance) plus the deductible amount under any applicable insurance policy or, in the case of any taking which is the subject of such Restoration, the portion of any Award (as hereinafter defined) payable in respect thereof which is available for such Restoration, *plus* (ii) any additional insurance proceeds that would have been payable in respect of any such loss if Tenant had complied with all relevant obligations of Tenant under this Lease and all relevant obligations of Tenant under all insurance policies (excluding the proceeds of any business interruption or rent loss insurance), *less* (iii) necessary and proper expenses paid or incurred by Tenant in the adjustment and collection of the insurance proceeds (including, without limitation reasonable attorneys’ fees and disbursements).

(d) Tenant’s Obligations Not Affected. Tenant shall be obligated to carry out, or cause to be carried out, the Restoration pursuant to Section 12(b) or the Demolition pursuant to Section 12(c), as the case may be, regardless (except for Landlord’s negligence or willful misconduct) of the cause of the loss which is the subject of such Restoration or Demolition, whether or not insurance shall have been in effect with respect to such loss, whether or not any proceeds from any such insurance shall be paid by the insurer, and whether or not any such insurance proceeds shall be sufficient to cover the cost of such Restoration or Demolition. Anything herein to the contrary notwithstanding, unless caused by Landlord’s negligence or willful misconduct, Landlord shall not be obligated to carry out any Restoration or Demolition. Landlord shall not be liable for any inconvenience, loss of business or annoyance arising from any damage or destruction of or to the Improvements or from any Restoration or Demolition, whether carried out by Landlord or Tenant.

(e) Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease.

13. CONDEMNATION.

(a) Notice. Landlord and Tenant each agree to give the other written notice of any taking by exercise of the power of condemnation or eminent domain, whether by legal

proceedings or otherwise (“**Taking**”) of all or any portion of the Premises promptly after receiving notice thereof. Landlord agrees not to initiate or endorse any Taking which would materially interfere with Tenant’s ability to use the Premises for the use(s) permitted under this Lease.

(b) Total Taking. In the event of a Taking (other than for temporary use) of the entire Premises or such a substantial part of the Premises that the remaining portion of the Premises, after Reconstruction, would be unsuitable for the continued use and occupancy for the uses permitted hereunder (a “**Total Taking**”):

(i) this Lease shall terminate as of the date that possession is delivered to the condemning authority;

(ii) Lease Payments shall be apportioned as of the date the Lease terminates; and

(iii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys’ fees and disbursements). The amount of any condemnation award or payment remaining after first reimbursing Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award or payment (including, without limitation reasonable attorneys’ fees and disbursements) (the “**Net Condemnation Proceeds**”) shall be apportioned between Landlord and Tenant in the manner set forth in this Section.

(c) Partial Taking. In the event of any Taking (other than for temporary use) which is not a Total Taking:

(i) this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Partial Taking;

(ii) there shall be an equitable abatement of the Lease Payments payable under this Lease based on the portion of the Premises taken;

(iii) any condemnation award or payment shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys’ fees and disbursements);

(iv) Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition and character immediately prior to such Partial Taking (the “**Reconstruction**”), except for any reduction in area caused thereby. The work performed under this Section shall be performed in accordance with the provisions of Section 4;

(v) the Net Condemnation Proceeds and any sums deposited by Tenant pursuant to Section 13(c)(vi) (collectively, the “**Reconstruction Funds**”) shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction, subject to substantially the same terms and conditions as are applicable to the Net Insurance Proceeds under Section 12;

(vi) Tenant shall be solely responsible for any costs of Reconstruction which are in excess of the Net Condemnation Proceeds. If, at any time, Landlord reasonably determines that the Net Condemnation Proceeds will be insufficient to pay the remaining costs of Reconstruction, Tenant shall deposit the difference with the Insurance Depository, and such amount shall be held, invested and disbursed in the same manner as the Net Condemnation Proceeds;

(vii) any balance of the Reconstruction Funds remaining after completion of the Reconstruction shall be apportioned between Landlord and Tenant in accordance with the provisions of this Section 13.

(d) Net Condemnation Proceeds/Reconstruction Funds.

(i) In the event of a Total Taking, the Net Condemnation Proceeds shall be allocated first to the Leasehold Mortgagee, to the extent required by the Leasehold Mortgage or any related loan documents, and then apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(ii) In the event of a Partial Taking, any Reconstruction Funds remaining after completion of the Reconstruction shall be applied first to reimburse Tenant for any sums deposited by Tenant pursuant to Section 13(c)(iv). The balance, if any, shall be apportioned between Landlord and Tenant in proportion to the fair market value of their respective interests in the Premises immediately prior to the Taking, as if such Taking had not occurred.

(iii) In determining the fair market value of Landlord’s interest in the Premises, due consideration shall be given to the fair market value of the Premises, as encumbered by the Lease, taking into account the remaining useful life of the Improvements at the expiration of the Term, as if such Taking had not occurred.

(e) Procedure for Apportioning Funds.

(i) Landlord and Tenant shall attempt, in good faith, to agree upon the apportionment of the Net Condemnation Proceeds or remaining Reconstruction Funds between Landlord and Tenant.

(ii) In the event that Landlord and Tenant are unable to agree upon the apportionment, either party shall have the right to submit such dispute (an “**Apportionment Dispute**”) to arbitration in accordance with the provisions of this Section and the arbitration rules of the American Arbitration Association then in existence.

(iii) During the first ten (10) days after either party notifies the other of its desire to submit the Apportionment Dispute to arbitration, Landlord and Tenant shall attempt to agree upon a single person (the “**Expert**”) who (a) shall be MAI certified, (b) shall have a minimum of ten (10) years’ experience in appraisal of real estate in the State in which the Premises are located, and (c) has not conducted within the previous three (3) years, does not presently conduct, and does not anticipate conducting a material amount of business with either Landlord or Tenant or their Affiliates, or otherwise have a financial interest in either Landlord or Tenant or their Affiliates and who is otherwise independent (the “**Expert Qualifications**”). If the parties agree upon a single Expert, each of them shall be responsible for one-half of the costs of the Expert so appointed. If Landlord and Tenant are unable to agree upon a single Expert, then within ten (10) days after the expiration of the period for agreeing upon a single Expert, each party, by giving notice to the other, shall appoint an Expert who meets the Expert Qualifications. Such notice shall be accompanied by a statement of all business conducted by the party making the appointment, and its Affiliates, with the Expert so appointed. If a party does not appoint an Expert within ten (10) days after the other party has given notice of the name of its Expert, the single Expert selected shall then be responsible for deciding the Apportionment Dispute.

(iv) If the two Experts are appointed by the parties as provided in this Section, they shall meet promptly and attempt to decide the Apportionment Dispute in accordance with the provisions of this Section. If they are unable to agree upon a resolution of the Apportionment Dispute within twenty (20) days after the second Expert has been appointed, the two Experts shall attempt to select a third Expert meeting the Expert Qualifications, within ten (10) days after the expiration of the period for the two Experts to render a decision. If the two Experts are unable to agree upon a third Expert within such period, either of the parties to this Lease may apply to the American Arbitration Association for the appointment of a third Expert who meets the Expert Qualifications. The third Expert, whether selected by the two Experts or by the American Arbitration Association, shall then be responsible for deciding the Apportionment Dispute. Each of the parties shall be responsible for the costs of its own Expert and one-half of the costs of the third Expert.

(v) In rendering a decision, the Expert(s) shall be entitled to solicit and receive both oral and written evidence, to conduct hearings and meetings and to consider any and all evidence which he deems necessary or appropriate to render his decision; provided, however, that in no event shall the Expert(s) conduct any *ex parte* hearings or otherwise receive oral evidence or testimony from any party outside the presence of the other party or, in the case of written evidence, unless a copy of such evidence is simultaneously delivered to the other party. The Expert(s) shall have no power to change the provisions of this Lease in any respect, and the jurisdiction of the Expert(s) is expressly limited accordingly.

(vi) The Expert(s) shall render a decision as soon as possible. Such decision shall be binding, final and conclusive on the parties (except in the case of manifest error), and judgment thereon may be entered in a court of competent jurisdiction.

(f) Taking For Temporary Use. In the event of a Taking of all or any portion of the Premises for temporary use or occupancy (a “**Temporary Taking**”):

(i) this Lease shall not terminate, there shall be no reduction in the Lease Payments payable under this Lease, and Tenant shall continue to perform and observe all of its obligations under this Lease as though such Taking had not occurred except only to the extent that it may be prevented from so doing;

(ii) any condemnation award or payment shall be applied first to reimburse Landlord and Tenant for the necessary and proper expenses paid or incurred by Landlord and Tenant in the collection of the condemnation award (including, without limitation reasonable attorneys' fees and disbursements);

(iii) the Net Condemnation Proceeds shall be held by the Insurance Depository and applied to the payment of Lease Payments coming due under this Lease. If the Temporary Taking extends beyond the expiration of the Term, Landlord shall be entitled to the portion of the Net Condemnation Proceeds allocable to the period after the expiration date;

(iv) at the termination of the Temporary Taking (whether prior or subsequent to the expiration date), Tenant shall proceed with due diligence to repair, restore and replace the Premises as nearly as possible to its condition prior to such Temporary Taking. The portion of the Net Condemnation Proceeds allocable to such Reconstruction shall be held, invested and disbursed by the Insurance Depository to pay the costs of Reconstruction upon substantially the same terms and conditions as are applicable to the Restoration Funds under Section 12. Tenant shall be responsible for any costs in excess of the amount of the award;

(v) any balance remaining after application of the condemnation award pursuant to Section 13(f)(ii), 13(f)(iii) and 13(f)(iv) shall be paid to Tenant.

(g) Survival. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

14. LANDLORD ENCUMBRANCES. It is expressly understood and agreed that Landlord's fee interest in the Land is not subordinate to any Leasehold Mortgage (as hereinafter defined). Tenant has no right to, and shall not, place or create any mortgage or other lien or encumbrance purporting to encumber Landlord's fee interest in the Land. In the event Landlord elects to encumber the Land or any portion thereof with a fee mortgage, such fee mortgage shall be subordinate to Tenant's rights under this Lease and upon Tenant's request, Landlord shall execute and cause such fee mortgagee to enter into a recognition, non-disturbance and attornment agreement with Tenant, substantially in the form attached hereto as **Exhibit F** or such other form as Landlord, Tenant, such fee mortgagee and any Leasehold Mortgagee may mutually agree to.

15. LEASEHOLD MORTGAGE.

(a) Tenant may from time to time, and without the consent of Landlord, secure financing (which may include, without limitation, mortgage loans, general credit lines, bond financing, including Community Development District bond financing, and CPACE financing) from banks, insurance companies, other financial institutions or other lenders (each one, a

“Leasehold Mortgagee”), granting to such Leasehold Mortgagee as security for such financing or general credit lines a mortgage encumbering Tenant’s leasehold interest in the Premises (which may include a collateral assignment of Tenant’s leasehold interest in the Premises with rights of reassignment, hereinafter a **“Leasehold Mortgage”**) and/or a security interest in any furnishings, fixtures, equipment and personalty purchased by or belonging to Tenant, or leased from third parties by Tenant and installed on the Premises by Tenant. To the extent any provision in this Section conflict or are inconsistent with any other provision of this Lease, the provisions of this Section shall control.

Tenant may also, with Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed, apply for any county, state and federal grants that may be available to Landlord (including, without limitation, those available from the Florida Navigational District) for the financial benefit the Marina (collectively, the **“Grants”**) on behalf of Landlord. Landlord agrees to reasonably cooperate with Tenant in connection with Tenant’s application for any such Grants, provided that Landlord shall not be required to incur any cost or liability in connection therewith and Tenant shall be solely responsible for any costs incurred in connection therewith, including without limitation any contribution requirements.

(b) If Tenant shall enter into any such Leasehold Mortgage, the Tenant or Leasehold Mortgagee shall forward to Landlord a copy of such Leasehold Mortgage together with a written notice setting forth the name of the Leasehold Mortgagee and its notice information (address for certified mail and electronic mail (e-mail)).

(c) When giving notice to Tenant with respect to any default under the provisions of this Lease, Landlord shall also serve a copy of such notice upon the Leasehold Mortgagee, in accordance with such Leasehold Mortgagee’s preferred form of notice as previously established pursuant to clause (b) above. No such notice to Tenant shall be deemed to have been given unless a copy of such notice has been mailed to such Leasehold Mortgagee, which notice must specify the nature of each such default.

(d) The Leasehold Mortgagee, upon mailing by Landlord of the notice referred to in subparagraph (c) of this Section, shall have, in addition to any period of grace extended to Tenant under the terms and conditions of this Lease, a period of ninety (90) days within which to cure the default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of Tenant for failure to make Lease Payments or to pay taxes, insurance or other monetary obligations of Tenant hereunder, the Leasehold Mortgagee shall be given written notice of such default by certified mail by Landlord, and the Leasehold Mortgagee shall have thirty (30) additional days from the date the notice of default was mailed within which to cure such default. The Leasehold Mortgagee’s decision to cure, or cause to be cured, any default under the Lease shall be at the Leasehold Mortgagee’s sole discretion and election and Leasehold Mortgagee shall not be required to cure any non-monetary default not within such Leasehold Mortgagee’s control such as an act of bankruptcy.

(e) Each Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Tenant, and Landlord shall accept such performance by any Leasehold Mortgagee as if performed by Tenant. In case Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have

the right (but not the obligation) to cure such default whether the same consists of the failure to make Lease Payments or to pay taxes, insurance, or other monetary obligation or the failure to perform any other matter or thing which Tenant is required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant.

(f) In the case of any default by Tenant, other than in the payment of Lease Payments under this Lease, Landlord, so long as no monetary default beyond any applicable notice and cure periods shall exist, will take no action to effect a termination of the Term of this Lease without first giving to the Leasehold Mortgagee a reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire Tenant's interest under this Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for serving such a notice shall be cured, and provided further, that nothing in this Section shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

(g) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this Section prior to its stated expiration date, Landlord will quit claim to Leasehold Mortgagee any interest in the Improvements and, at the same time, enter into a new lease of the Premises upon the same terms and conditions as this Lease for the remainder of the Term with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, to a corporation or other entity approved to conduct business in the State of Florida, formed by or on behalf of such Leasehold Mortgagee or by or on behalf of the holder of the note secured by the Leasehold Mortgage held by such Leasehold Mortgagee, for the remainder of the Term, effective on the date of such termination, upon the covenants, agreements, terms, provisions and limitations contained in this Lease (including, without limitation, the Lease Payments), provided that such Leasehold Mortgagee makes written request and executes, acknowledges and delivers to Landlord such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to Landlord of all amounts then due to Landlord, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the Lease Payments thereafter becoming due under such new lease. In no event, however, shall such mortgagee or its nominee or designee be required to cure a default under this Lease which is not subject to being cured by such mortgagee or its nominee or designee in order to obtain a new lease. Any new lease referred to in this Section shall not require any execution, acknowledgment or delivery by Landlord in order to become effective as against Landlord and Landlord shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by Landlord of such new lease accompanied by (i) payment to Landlord of all amounts then due to Landlord of which the Leasehold Mortgagee shall theretofore have received written

notice; and (ii) an agreement by the Leasehold Mortgagee to pay all other amounts then due to Landlord of which the Leasehold Mortgagee shall not theretofore have received written notice. In addition, immediately upon receipt by Landlord of such new lease, as provided in this subparagraph, Landlord shall be deemed to have executed, acknowledged and delivered to the Leasehold Mortgagee an assignment of all subleases covering the Premises which theretofore may have been assigned and transferred to Landlord and all subleases under which subtenants shall be required to attorn to Landlord pursuant to the terms and conditions of such subleases or this Lease. Such assignment by Landlord shall be deemed to be without recourse as against Landlord. Within ten (10) days after a written request therefore by the Leasehold Mortgagee, such assignment or assignments shall be reduced to writing in recordable form and executed, acknowledged and delivered by Landlord to the Leasehold Mortgagee.

(h) The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment or quitclaim conveyance of this Lease and the Improvements in lieu of foreclosure, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease as provided in subparagraph (j) below, except that such Leasehold Mortgagee may assign this Lease without Landlord's consent to any assignee at any time, provided that prior notice is given to Landlord in accordance with this Lease.

(i) In the event that a Leasehold Mortgagee shall become the owner or holder of Tenant's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Tenant," as used in this Lease, means only the owner or holder of Tenant's interest for the time being so that, in the event of a sale, assignment or other disposition of Tenant's interest in this Lease by the Leasehold Mortgagee, the Leasehold Mortgagee shall be entirely freed and relieved of all covenants and obligations of Tenant under this Lease and it shall be deemed and construed, without further agreement between Landlord and the Leasehold Mortgagee or between Landlord, the Leasehold Mortgagee and the Leasehold Mortgagee's purchaser or assignee at any such sale or upon assignment of Tenant's interest, that the purchaser or assignee of Tenant's interest has assumed and agreed to carry out any and all covenants and obligations of Tenant. The Leasehold Mortgagee's purchaser or assignee shall sign an Assignment and Assumption Agreement of this Lease.

(j) Within ten (10) days after written request by Tenant or by Tenant's Leasehold Mortgagee, or in the event that upon any sale, assignment or mortgaging of Tenant's interest in this Lease by Tenant or Tenant's Leasehold Mortgagee, an offset statement shall be required from Landlord, Landlord agrees to deliver in recordable form a certificate to any proposed Leasehold Mortgagee, purchaser, assignee or to Tenant, certifying (if such be the case) (i) the amount of the Lease Payments due under the Lease, if any, and the date to which Lease Payments have been made; (ii) whether this Lease is in full force and effect; (iii) whether Landlord has any knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) whether there are no defenses or offsets which may be asserted by Landlord against Tenant in respect of obligations pursuant to this Lease as of the date of the estoppel. The estoppel letter shall be certified to Landlord and the Leasehold Mortgagee and none other.

(k) Reference in this Lease to acquisition of Tenant's interests in this Lease by the Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of

Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the Leasehold Mortgage and provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

(l) So long as Tenant's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee that Landlord shall not sell, grant or convey to Tenant all or any portion of Landlord's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee. In the event of any such sale, grant or conveyance by Landlord to Tenant, Landlord and Tenant agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This subparagraph (l) shall not be construed to prevent a sale, grant or conveyance of Landlord's fee simple title by Landlord to any person, firm or corporation other than Tenant, its successors, legal representatives and assigns.

(m) Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of subparagraph (i), above) of a Leasehold Mortgagee; provided that such assignee shall forward to Landlord a copy of such assignment of Leasehold Mortgage, together with a written notice setting forth the name and address of the assignee and its notice information (address for certified mail and electronic mail (e-mail)).

(n) Any Leasehold Mortgage shall be specifically subject and subordinate to Landlord's rights under this Lease. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon Tenant's interest in this Lease or upon the lien of any Leasehold Mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against Landlord or Landlord's interest in this Lease. Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Landlord in the Premises, or any portion of them, be encumbered or subordinated, except for a mortgage on Tenant's leasehold interest.

(o) No Leasehold Mortgagee or other person succeeding to the interest of Tenant in this Lease through or subsequent to an enforcement proceeding shall be liable under this Lease, unless and until such time as it becomes the tenant of the leasehold estate, and then only for such obligations of Tenant which accrue during the period while it remains the tenant of the leasehold estate.

(p) Notwithstanding any provision in this Lease to the contrary, in the event of any Casualty or Taking of the Premises or any portion thereof and if allowed by law or its agreements with Tenant, the most senior Leasehold Mortgagee (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not request or shall not be permitted by law or its agreements with Tenant to do so) shall be permitted to receive insurance proceeds and/or condemnation awards otherwise payable to Tenant and shall be permitted (but shall not be obligated except as required by law or its agreements with Tenant or as provided in the next sentence) to restore the Premises. In addition, if such Leasehold Mortgagee (by reason of its acquiring Tenant's leasehold estate) shall be obligated under this Lease

to repair or restore the Premises, such obligation shall be limited to the amount of such proceeds or awards actually received by such Leasehold Mortgagee.

(q) Upon Tenant's request, and at no material cost to Landlord, Landlord shall execute such documents or instruments confirming Tenant's right and authority to enter into a Leasehold Mortgage and/or granting a security interest in this Lease and confirming that Landlord will give such Leasehold Mortgagee notice and the right to cure any Default of Tenant as provided herein. In addition, Landlord, upon the request of Tenant or any Leasehold Mortgagee, shall execute such reasonable modifications or amendments of this Lease as shall be required by such Leasehold Mortgagee or by any person to which Tenant has made application for a Leasehold Mortgage provided such modifications or amendments do not, taken as a whole, materially affect Tenant's obligations or materially affect Landlord's rights under this Lease. Landlord shall not unreasonably refuse any such request for such modification or amendment. Further, Landlord agrees to enter into a triparty agreement with Tenant and its lender, upon terms and conditions acceptable to such lender and to Landlord, to set forth the rights of Tenant's lender substantially as provided in this Section. In no case shall Landlord be required to guarantee any loan, provide any financing, or mortgage any of its property.

(r) Landlord and Tenant agree that they will make good faith efforts to assist one another so that Tenant can obtain a commercially reasonable loan to finance the construction of the Marina Restaurant Component.

16. LANDLORD NON-DISTURBANCE AND RECOGNITION AGREEMENT.

Tenant may enter into one or more subleases for the Premises with subtenants. Provided that Tenant obtain the prior written consent of the subject sublease(s) from Landlord, and Landlord agrees that such consent shall not be unreasonably withheld, conditioned, or delayed, then:

(a) Upon any termination of this Lease, provided the applicable subtenant of the Premises (or any portion thereof) is not in default under its sublease beyond any applicable notice and cure periods, (i) Landlord shall not disturb such subtenant's possession of its subleased premises, nor shall any of such subtenant's rights under its sublease be affected in any way by reason of any default under this Lease by Tenant, provided such subtenant shall attorn and recognize Landlord, as the subtenant's sublandlord under its sublease and (ii) Landlord shall recognize such subtenant's rights under its sublease, as such subtenant's sublandlord under its sublease, and accept such subtenant's attornment.

(b) Upon any such attornment and recognition, the applicable sublease shall continue in full force and effect as, or as if it were, a direct lease between Landlord and the subtenant upon all of the then executory terms, conditions and covenants as are set forth in the sublease prior to the date of attornment, and shall be applicable after such attornment and recognition provided, however, at no time shall Landlord be (i) liable for any prior default by Tenant, as sublandlord under the sublease; (ii) responsible for any monies owing by Tenant, as sublandlord under the sublease; (iii) required to account for any security deposit, other than any security deposit actually delivered to Landlord or for any rent that the subtenant might have paid for more than the current month to Tenant; nor (v) liable for the breach of any representation or warranty (of any nature whatsoever) made by Tenant or to any other party for matters arising prior to the date of attornment.

(c) Upon the request of a subtenant of the Premises (or any portion thereof), Landlord shall enter into a commercially reasonable non-disturbance, attornment and recognition agreement with the subtenant setting forth the terms and conditions of this Section 16 and such other terms as mutually may be agreed upon by Landlord and the subtenant.

17. COVENANT OF QUIET ENJOYMENT. Landlord covenants and warrants that, provided Tenant is not in breach of any material term of this Lease beyond any applicable notice and cure period, Tenant shall peacefully have and enjoy the sole possession of the Premises during the Term free from the adverse claims of any persons, firms or corporations claiming by, through or under Landlord. Landlord agrees to execute any and all easements or rights of way on, over or under the Premises or any part thereof at Tenant's request which are or may be needed or required by Tenant in conjunction with Tenant's use and enjoyment of the Premises; and Landlord agrees to execute any other public utility or governmental body related documents or agreements in the form customarily provided by such public utility or governmental body, which is necessary to fulfill the intent and purposes of this Lease, including, without limitation, the facilitation of, a successful prosecution of all Improvements and construction, signage rights, parking, access, drainage, utilities, communications, lighting, governmental services, the operations by Tenant under this Lease, and all other matters and things contemplated or impliedly necessary under this Lease for its full effectuation, performance or realization. Landlord agrees not to file or cause any zoning change to be made that would affect the Premises without the prior written approval of Tenant. Landlord warrants and represents that there are no mortgages or deeds of trust applicable to the Premises as of the Effective Date.

Landlord represents and warrants that the Premises are owned in fee simple by Landlord; that it is seized of the Premises in fee, subject only to the exceptions set forth on Exhibit D hereto, and that it has entered into this Lease with proper authority. If, at any time during the Term, any indebtedness, lien, assessment, claim, or other matter whatsoever shall arise or shall be asserted which in any way interferes or threatens to interfere with Tenant's use of the Premises as herein provided or referenced, and such indebtedness, lien, assessment, claim, or other matter arises due to Landlord's breach of this Lease or any act or omission of Landlord from and after the Effective Date, then Tenant shall have the right to expend such sums as are necessary to abate said threat or interference and deduct the same from consideration due Landlord until Tenant is reimbursed in full.

18. ASSIGNMENT AND SUBLETTING.

(a) Except as otherwise expressly provided herein, Tenant shall be permitted to sublease any portion of the Premises, in whole or in part, in any manner whatsoever, to subtenants (a "**Premises Tenant**") pursuant to a sublease in the ordinary course of its business (a "**Tenant Lease**") without the consent of Landlord, if the use specified in the Tenant Lease is permitted hereunder and by current and applicable zoning requirements. Tenant also may transfer, license, lease, sublease, and/or assign this Lease and its rights and interests hereunder, without the consent of Landlord, (i) at any time, to an Affiliate (as such term is defined in the Comprehensive Agreement), provided that Tenant or the Developer or a manager who is a knowledgeable manager reasonably approved by Landlord is the manager of such Affiliate; and (ii) from and after the issuance of a certificate of occupancy with respect to the Marina Restaurant Component, to any third party. Tenant shall also be permitted to transfer, convey or pledge its interest in this Lease

to a Leasehold Mortgagee without the consent of Landlord. Any such sublease, transfer, conveyance or pledge by the Tenant shall be subject to all of the terms and provisions of this Lease. Except as otherwise expressly permitted hereunder, if Tenant seeks to assign, transfer or sell its leasehold interest in this Lease, the express prior written consent of Landlord shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. Any such consent to an assignment shall be subject to all of the terms and provisions of this Lease and, provided that the assignee agrees in writing to assume all of the Tenant's rights and obligations under this Lease, shall release Tenant from its obligations under this Lease. Landlord's consent shall not be required for Premises Tenant's certificates of occupancy, building permits, tenant allowances or buildout terms and procedures except as may otherwise be required by Landlord by virtue of Landlord being the Governmental Authority overseeing these items in its regulatory capacity. Within sixty (60) days of executing a Tenant Lease with a Premises Tenant, Lessee shall notify Lessor the Tenant Lease has been executed and the identity of the Premises Tenant.

(b) Should Tenant take any action to assign this Lease without the prior written consent of Landlord as provided in Section 18(a), then any such assignment shall be null and void and of no force and effect.

(c) Any successor or assignee of Tenant's rights and/or obligations under this Lease shall expressly assume in writing performance of such rights and/or obligations and deliver same to Landlord within ten (10) days after consummation of the assignment, transfer or sale.

19. NOTICES. All notices, requests, consents, demands, approvals or other communications required or permitted under this Lease shall be in writing, addressed to the person identified below, and delivered either by: (a) hand delivery, (b) overnight courier by a nationally recognized courier, with all fees prepaid; Registered or Certified Mail, return receipt requested and postage prepaid; or delivered by email with "FORMAL NOTICE UNDER GROUND LEASE" in the subject line:

If to Landlord:	Town of Lake Park Attention: Town Manager 535 Park Avenue Lake Park, Florida 33403
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With a copy to:

Town of Lake Park
Attention: Town Attorney
535 Park Avenue
Lake Park, Florida 33403

If to Tenant:	FD P3 LP RESTAURANT, LLC, c/o Forest Development P3 LPM, LLC Attn: Peter Baytarian 11231 US Highway 1, Suite 354
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North Palm Beach, Florida 33408
info@forestdevelopment.com

And to:

Saul Ewing LLP
Attn: Anthony Kang
701 Brickell Avenue, 17th Floor
Miami, Florida 33131
Anthony.kang@saul.com

With a copy to:

Zabik & Associates, Inc.
Attn: Larry Zabik
11398 Okeechobee Blvd, Suite 2
Royal Palm Beach, Florida 33411
lzabik@zabikandassociates.com

Any and all tax notices and information shall also be sent to: Tenant

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, or (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt.

Landlord and Tenant agree that any and all notices given by either party shall be provided simultaneously to any assignee of Tenant or any lender to Tenant when such assignee or lender has been previously identified in writing to the parties along with the appropriate address for such notices. Either Party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

20. MISCELLANEOUS.

(a) Captions. Captions or headings of sections are for convenience only and shall not be considered in construing the meaning of the contents of such section.

(b) Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(c) Prevailing Party. Should Landlord or Tenant institute any legal proceedings against the other for breach of any provisions herein contained, each party in such action shall be

responsible for its own conduct costs and litigation expenses including reasonable attorneys' fees through all levels of appeal.

(d) No Prior Agreements / No Third-Party Beneficiaries. This Lease supersedes and cancels all prior negotiations between the parties, and all other negotiations and understandings are merged into this Lease. This Lease, together with the terms and conditions of the Comprehensive Agreement applicable to the Marina Restaurant Component, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. The parties acknowledge that there are no other promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between and among them, except as set forth, referenced, or incorporated herein or in the Comprehensive Agreement (to the extent incorporated herein). Furthermore, this Lease is intended solely for the benefit of the parties hereto expressly noted herein and whose signatures appear hereon and their respective permitted successors and assigns, as applicable. No third party shall have any rights or interest herein and there are no and shall be no third-party beneficiaries hereto.

(e) Amendments and Modifications/No Oral Modifications. All amendments or modifications to this Lease must be in writing signed by the Parties. No purported amendments or modifications to this Lease which are oral shall be effective, binding or enforceable.

(f) Interpretation and Gender. The singular shall include the plural, and the masculine, feminine or neuter shall include either of the others as appropriate in context.

(g) Successors and Assigns. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; they shall all be bound jointly and severally by the terms, covenants and agreements herein.

(h) No Waiver. The failure to enforce any particular provision of this Lease on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision.

(i) Estoppel Certificates. Landlord and Tenant agrees, from time to time as may be requested by each other, to execute, acknowledge and deliver within thirty (30) days after being requested to do so an estoppel letter certifying the following to such party as it reasonably may designate, including any Leasehold Mortgagee: (a) that (i) this Lease is in full force and effect and has not been amended, modified or superseded; (ii) Landlord and Tenant are not in default under this Lease; (iii) Tenant has no defense, offset or counterclaim under this Lease or otherwise against Landlord with respect to this Lease or the Premises; (b) the date to which Lease Payments have been paid; and (c) such other information as the requesting party may reasonably request.

(j) Calculation of Time Periods. In the computation of any time periods hereunder shall exclude Saturdays, Sundays, and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday, or a legal holiday shall extend to 6:00 p.m. eastern time of the next business day.

(k) Florida Law and Venue. This Lease and all of its provisions shall be construed in accordance with the laws of the State of Florida. In the case of any legal proceedings, venue shall be Palm Beach County.

(l) Severability. In the event any provision of this Lease is prohibited, unenforceable or invalid under the laws of any jurisdiction, including those of the State of Florida, such prohibition, or unenforceable or invalid provision shall not in any fashion affect the enforceability or validity of the remaining provisions hereof.

(m) Construction. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation of this Lease.

(n) No Cross Default. The Comprehensive Agreement contemplates that the “Project” (as defined in the Comprehensive Agreement) will be comprised of the “Hotel Component,” the “Boat Storage Component,” the “Public Marina Component” and the “Marina Restaurant Component” (collectively the “**Components**” and individually a “**Component**”). The Developer has created a separate entity to be the tenant under this Lease and separate entities to be the tenants under separate ground leases with Landlord with respect to the Boat Storage Component (the “**Boat Storage Lease**”), the Public Marina Component (“**Marina Lease**”), and the Hotel Component (the “**Hotel Lease**”). The Boat Storage Lease, the Marina Lease and the Restaurant Lease are collectively referred to herein as the “**Other Leases**” and individually as an “**Other Lease**”).

Landlord and Tenant hereby agree that the rights and obligation under the Comprehensive Agreement shall be bifurcated so that (i) any rights and obligations with respect to the Marina Restaurant Component under the Comprehensive Agreement shall only benefit and be required to be performed by the Tenant under this Lease, any obligation under this Lease shall only apply to the Marina Restaurant Component under the Comprehensive Agreement, and any breach of the obligations under this Lease or the rights and obligations under the Comprehensive Agreement with respect to the Marina Restaurant Component shall not affect or constitute a default under the Other Leases; (ii) any rights and obligations with respect to any Component (other than the Marina Restaurant Component) under the Comprehensive Agreement shall only benefit and be required to be performed by the tenant under the applicable Other Lease, any obligation under the applicable Other Lease shall only apply to the applicable Component of such Other Lease under the Comprehensive Agreement, and any breach of the obligations under such Other Lease or the rights and obligations under the Comprehensive Agreement with respect to the Component applicable to such Other Lease shall not affect or constitute a default under this Lease; and (iii) to the extent of any inconsistency between the terms of this Lease and the terms of the Comprehensive Agreement, the terms of this Lease shall prevail and control.

(o) Landlord Approval. Landlord shall act on requests from Tenant for any consent or approval hereunder in a commercially reasonable manner and shall use commercially reasonable efforts to respond to any such request within twenty (20) days following Landlord’s receipt thereof (unless another time period for such response is expressly provided for herein). Landlord’s response may consist of an approval or disapproval of the request, or a conditional

approval thereof subject to specified conditions, or a request for further data or information, or any combination thereof. If Landlord does not approve, reject or request additional information regarding any request hereunder within twenty (20) days following Landlord's receipt thereof (or another time period expressly provided for herein with respect thereto), Tenant may provide to Landlord a second written request, which shall include a legend, printed in capital letters and boldface type, to the following effect: **"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY LANDLORD OF THE ACTION REQUESTED BY TENANT."** Landlord shall be deemed to have approved or consented to such action if Landlord fails to object to or request additional information with respect thereto within ten (10) days of such second request.

Wherever in this Lease the approval or consent of Landlord is required, it is understood and agreed that, unless specifically stated to the contrary, such approval or consent shall be granted or withheld in the reasonable discretion of Landlord or of the Town Manager) of Landlord (the **"Town Manager"**) (as applicable), within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except as may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the Town Manager in the discretion of the Town Manager acting reasonably:

- (i) The exercise of Landlord's rights of entry and inspection;
 - (ii) The exercise of Landlord's right or obligation to execute a joinder in (a) applications for land development approvals or other governmental approvals (including permits) which are necessary for Tenant to obtain from governmental authorities, and where such applications require evidence of the consent of the property owner, and (b) any easement, declaration, amendment or creation of an agreement affecting title to the Premises and any other document as may be requested by Tenant in connection with the development and/or operation of the Premises;
 - (iii) The exercise of Landlord's right to receive and approve or not approve and specify the basis for such disapproval the form of certificates of insurance, policies, limits, and coverages of insurance, bonds, and Environmental Assessments;
 - (iv) The execution of estoppel statements (or any modifications of the terms thereof) to be given by Landlord under this Lease;
 - (v) The approval, if required, of any assignment or sublease; and
 - (vi) Other provisions of this Lease where the act, approval or consent of the Landlord is expressly authorized or required, except any amendment to this Lease shall require the written consent of the Town Commission of the Landlord.
- (p) Further Assurances. Each Party will promptly cooperate each with the other and will execute and deliver any and all written further assurances and/or documents that are reasonably necessary, convenient, or desirable to evidence, complete or perfect (or any combination thereof) the transactions contemplated by this Lease, so long as no further assurance or document to be executed operates to impose any new or additional obligation or liability upon

any Party. Each Party will so perform all other acts that are reasonably necessary, convenient, or desirable for any such purpose, so long as no new or additional obligations or liabilities are incurred as a result thereof.

Additionally, Landlord further agrees that it will execute such documents and perform such acts as Tenant may reasonably require in connection with the development and/or operation of the Premises, including, but not limited to, executing such easements, documents affecting title to the Premises, applications for governmental approvals, modifications and/or termination of existing easements and/or restrictions affecting the Premises, creation of declarations affecting the Premises and such other documents and acts as reasonably requested by Tenant in connection with its development and/or operation of the Premises, provided that such cooperation shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

21. DELAYS. In any case where either party hereto is required to do any act, such party shall be excused from the performance thereof for the duration of delays caused or resulting from Acts of God, war, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, government regulations, moratorium, other causes beyond such party's reasonable control or circumstances or events characterized at law as "force majeure", whether the time for such performance shall be designated by a fixed date, a fixed period of time, or a "reasonable" period of time. In addition, should any lawsuit, legal proceeding, investigation or other legal matter be filed or commenced against Landlord, Tenant, or any other party related to this Lease, which materially affects this Lease, all time periods contained in this Lease shall be delayed until such legal matter is resolved in its entirety, including any and all appellate proceedings or the like. Notwithstanding anything to the contrary set forth in this Section 21 or elsewhere in this Lease, no event of force majeure (or any event deemed to be beyond the control of Tenant) shall be construed to apply to any of Landlord's or Tenant's monetary obligations hereunder or to permit or allow either Landlord or Tenant to delay or defer any such obligation.

22. ENVIRONMENTAL MATTERS.

(a) For purposes hereof, the following terms shall have the following meanings:

(i) **"Environmental Laws"** shall mean all Federal, state and local laws, statutes, ordinances, codes, rules, regulations and other requirements respecting the environment, including but not limited to those respecting: (A) the generation, use, handling, processing, storage, treatment, transportation, or disposal of any solid or hazardous wastes, or any hazardous or toxic substances or materials; (B) pollution or contamination of land, improvements, air (including indoor air), or water (including groundwater); (C) emissions, spills, releases, or discharges of any substance onto or into the land, improvements, air (including indoor air), or water (including groundwater), or any sewer or septic system; (D) protection of wetlands; (E) aboveground or underground storage tanks; (F) air quality (including indoor air quality) or water quality (including groundwater quality); and (G) protection of endangered species. Without limiting the generality of the foregoing, the term "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Sec. 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42

U.S.C., Sec. 6901, et seq., and the Toxic Substance Control Act of 1976, as amended, 15 U.S.C., Sec. 2601, et seq.

(ii) **“Environmental Violation”** shall mean (A) any direct or indirect discharge, disposal, spillage, emission, escape, pumping, pouring, injection, leaching, release, seepage, filtration or transporting of any Hazardous Substance at, upon, under, onto or within the Premises, or from the Premises to the environment, in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (B) any deposit, storage, dumping, placement or use of any Hazardous Substance at, upon, under or within the Premises or which extends to any adjoining property in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law or which could result in any liability to any Governmental Authority or any other person for the costs of any removal or remedial action or natural resources damage or for bodily injury or property damage, (C) the abandonment or discarding of any barrels, containers or other receptacles containing any Hazardous Substances in violation of any Environmental Laws, or (D) any violation of or noncompliance with any Environmental Law.

(iii) **“Governmental Authority”** shall mean any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, special service district or public body, or any court or administrative tribunal.

(iv) **“Hazardous Substances”** shall mean any substance, material or waste defined as a pollutant or contaminant, or as a hazardous, toxic or dangerous substance, material or waste, under any Environmental Law, including, without limitation, petroleum, petroleum products, PCBs and asbestos.

(b) Tenant shall not use, or permit its agents, employees, contractors, subtenants, licensees or invitees to use the Premises for the purpose of treating, producing, handling, transferring, processing, transporting, disposing, using or storing a Hazardous Substance in violation of any Environmental Law. Tenant shall, at Tenant’s own expense, comply with all Environmental Laws as the same affect the Premises or the operations and activities of Tenant, its agents, employees, contractors, subtenants, licensees or invitees (collectively, **“Tenant Parties”**) on or about the Premises.

(c) In the event Tenant becomes aware of any Environmental Violation or any suspected Environmental Violation at the Premises, Tenant shall promptly (a) notify Landlord of such Environmental Violation or suspected Environmental Violation, and (b) deliver to Landlord any notice filed by or received by Tenant with or from any Governmental Authority relating thereto immediately upon filing or receipt thereof.

(d) In the event that, in the reasonable opinion of Landlord, there is a basis to believe that an Environmental Violation exists, Landlord shall have the right to have its environmental consultants (**“Site Reviewers”**) visit the Premises and perform environmental site

investigations and assessments (“**Site Assessments**”) on the Premises for the purpose of determining whether there exists on the Premises any Environmental Violation or any condition which is likely to result in any Environmental Violation. Such Site Assessments may include both above and below the ground testing for Environmental Violations and such other tests as may be necessary, in the opinion of the Site Reviewers, to conduct the Site Assessments. The Site Reviewers shall use their good faith diligent efforts to minimize any interference with the operations of Tenant and other occupants of the Premises. Tenant shall supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and shall make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters.

(e) In the event that there exists any Environmental Violation caused by any Tenant Party, Tenant shall, at its own cost and expense:

(i) promptly and diligently take any and all actions necessary to return the Premises to a condition which is in compliance with Environmental Laws, and which will not impede or limit further development of the Premises;

(ii) provide Landlord, within ten (10) days after Landlord’s request therefor, adequate financial assurances that Tenant will effect remediation in accordance with applicable Environmental Laws. Such financial assurances shall be a bond or letter of credit in form and substance reasonably satisfactory to Landlord and in an amount equal to Landlord’s reasonable estimate of the anticipated cost of such remedial action;

(iii) without limiting the generality of Section 22(e)(i), make all submissions and provide all information required by Environmental Laws. Tenant shall comply with all requests of the United States Environmental Protection Agency, the Florida Department of Environmental Protection and any other Governmental Authority having jurisdiction over the Premises, including any request that a cleanup plan be prepared and that a cleanup be undertaken with respect to the Premises. In such event, Tenant shall, at Tenant’s own expense, prepare and submit appropriate documents, and carry out the approved plans, or take such other action as may be appropriate to eliminate any environmental harm or threat to public health or welfare and to eliminate any potential liability of Landlord or Tenant. Any submissions made by Tenant pursuant to this Section and any action taken by Tenant pursuant to such submissions shall be subject to the prior review and approval of Landlord, which approval shall not be unreasonably withheld.

(f) Tenant shall indemnify, defend and save Landlord harmless from all claims, actions, suits, proceedings, losses, damages, liabilities, fines and expenses (including without limitation fees of attorneys, investigators and experts) arising or alleged to arise from or in connection with (a) any Environmental Violations, and (b) Tenant’s failure to provide all information, make all submissions and take all actions with respect to the Premises required by any Governmental Authority in connection with any Environmental Violations.

22. RADON. Section 404.056 (6), Fla. Stat., requires the inclusion of the following “Notification on Real Estate Documents” at the time of, or prior to, contract for sale and purchase

of any building or execution of a rental agreement for any building: “Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

23. SURRENDER. Upon the expiration or any earlier termination of the Term:

(a) Tenant shall surrender the Premises to Landlord, in good order, condition and repair, reasonable wear and tear, Casualty and Taking excepted;

(b) all right, title and interest of Tenant in and to the Premises shall automatically cease and terminate; and

(c) Tenant shall deliver the following to Landlord, to the extent in the possession or control of Tenant: (a) executed counterparts of any subleases, occupancy, license and concession agreements; (b) executed counterparts of any service and maintenance contracts then affecting the Premises; (c) true and complete maintenance records for the Premises; (d) any original licenses and permits then pertaining to the Premises, including, without limitation, the then existing certificate of occupancy for the Premises; and (e) any warranties and guaranties then in effect which Tenant has received in connection with any work or services performed or equipment installed in the Premises, together with a duly executed assignment thereof to Landlord. Nothing herein contained shall be or be deemed to be a consent by Landlord to any sublease, occupancy, license, concession agreement, service or maintenance contract for a term to expire later than the Expiration Date.

Notwithstanding the foregoing to the contrary, Landlord shall have the right to elect upon the expiration or any earlier termination of the Term, by written notice to Tenant no later than six (6) months prior to the date of such expiration or earlier termination, to require Tenant to raze the Improvements, and clear, grade and seed the former location thereof and put the Premises in good, safe, lawful, clean and orderly condition, in which event Tenant, at its sole cost and expense, shall do so at its sole cost and expense within one hundred and eighty (180) days of such expiration or termination.

24. RIGHT OF FIRST REFUSAL. From and after the date hereof and during the Term, Landlord shall not sell, transfer or otherwise dispose of or convey all or part of Landlord’s fee interest in the Premises to any third party until and unless Landlord shall have obtained a bona fide offer therefor (the “**Landlord’s Offer**”), delivered written notice thereof to Tenant, which notice shall contain a true and accurate copy of Landlord’s Offer, and offered to sell, transfer or otherwise dispose of such fee interest to Tenant at the same price and, except as hereafter provided, upon the same terms and conditions as contained in Landlord’s Offer, and Tenant has not elected to exercise its right of first refusal in accordance herewith.

If Tenant shall either deliver written notice of rejection of Landlord’s Offer to Landlord or fail to deliver written notice of acceptance of Landlord’s Offer within thirty (30) days after the date of receipt of Landlord’s notice, Landlord’s fee interest in the Premises may, during the one

hundred eighty (180) days thereafter, be sold, transferred or otherwise disposed of to the original offeror at the same price and upon the same terms and conditions as contained in Landlord's Offer.

In the event Tenant rejects Landlord's Offer or fails to accept Landlord's Offer in accordance herewith, this Lease and all of its terms and conditions (including this right of first refusal) shall nevertheless remain in full force and effect and Landlord and any purchaser or purchasers of the Premises shall be bound thereby.

Failure of Tenant to exercise its right of first refusal on one or more occasions shall not affect Tenant's right to exercise it on any subsequent occasion. Any sale or transfer of the Premises, or any part thereof, other than in strict compliance with the terms of this Section shall be null and void and of no effect as to Tenant, and Tenant shall be entitled to purchase the Premises from the purchaser upon the same terms and conditions and at the same price specified in Landlord's Offer, provided Tenant notifies Landlord of its election thirty (30) days after receipt of notice that complies with the requirements hereof. The making of Lease Payments to such purchaser or otherwise treating such purchaser as Landlord shall not be deemed to be a waiver of Tenant's right of first refusal or any other right or privilege of Tenant and shall not create an estoppel with respect thereto.

Any sale or transfer of Landlord's interest in the Premises, or any part thereof shall be expressly made subject to all of the terms, covenants and conditions of this Lease. In the event Landlord's Offer provides for the sale and purchase of Landlord's interest in the Premises and other property, Tenant shall only be required to purchase all the Premises in the event it desires to exercise its right of first refusal hereunder.

In the event Tenant exercises its right of first refusal then, notwithstanding the terms of Landlord's Offer (i) Landlord shall convey title to the Premises by warranty deed approved by Tenant and the title company; (ii) title to the Premises shall be free and clear of any liens and encumbrances except the lien for current taxes which are not delinquent at the time of closing and such other exceptions to title as may have been created by Tenant during the Term or as existed on the date hereof and/or were approved by Tenant thereafter; and (iii) title to the Premises shall otherwise comply with the terms of this Lease as they pertain to condition of title. Upon such election by Tenant, Landlord and Tenant agree to act in good faith to consummate a purchase agreement for the Premises incorporating the express terms of Landlord's Offer and other customary terms and provisions for similar transactions of similar property located in the same geographic area as the Premises.

25. **NO BROKER.** Landlord and Tenant represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction and that there are no claims or rights for commissions, finders' fees or other compensation (collectively, "**compensation**") by any person or entity. If any broker or finder asserts a claim for compensation based upon any actual or alleged contact, dealings or communication with Landlord or Tenant, then the party through whom such broker or finder makes its claim shall indemnify and hold the other party (the "**Indemnified Party**") harmless from and against any and all claims, damages, judgments, suits, liabilities, losses, costs and expenses (including without limitation, reasonable

attorneys' fees and court costs) suffered or incurred by or brought against the Indemnified Party in connection with such claim for compensation..

26. MEMORANDUM OF LEASE. Immediately following the execution of this Lease, the parties shall execute and record a Memorandum of Lease in the public records in the form attached hereto as Exhibit E.

27. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR THE RELATIONSHIP OF THE PARTIES CREATED HEREBY. THE PARTIES FURTHER HEREBY WAIVE THE RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE FOREGOING WAIVERS ARE IRREVOCABLE AND MUTUALLY, KNOWINGLY, WILLINGLY, INTENTIONALLY AND VOLUNTARILY MADE AFTER EACH PARTY HAS HAD THE BENEFIT OF OR OPPORTUNITY TO GAIN LEGAL ADVICE AND COUNSEL. EACH PARTY REPRESENTS, WARRANTS AND AFFIRMS TO THE OTHER THAT NO PARTY HAS IN ANY WAY AGREED, REPRESENTED OR OTHERWISE SUGGESTED OR IMPLIED THAT IT WILL NOT FULLY ENFORCE THE FOREGOING WAIVERS IN ALL INSTANCES.

[The Balance of the Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

TENANT:

FD P3 LP RESTAURANT, LLC,
a Florida limited liability company

By: _____

Name:

Title:

Date: _____

LANDLORD:

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

Exhibit A

Site Plan

Exhibit B

Legal Description of the Premises

Exhibit C**Lease Payments**

Period	Lease Payment
Calendar Year 2024	\$0
Calendar Year 2025	\$75,000.00
Calendar Year 2026	\$75,000.00
Calendar Year 2027	\$75,000.00
Calendar Year 2028	\$75,000.00
Calendar Year 2029	\$75,000.00
Calendar Year 2030	\$75,000.00
Calendar Year 2031	\$75,000.00
Calendar Year 2032	\$75,000.00
Calendar Year 2033	\$75,000.00
Calendar Year 2034	\$75,000.00

Lease Payments shall be made on or before May 1 of each calendar year from 2025 to 2034

No Lease Payments shall be due or payable commencing with calendar year 2035

Exhibit D

Permitted Title Exceptions

Exhibit E

Form of Memorandum of Lease

This instrument was prepared by:

Saul Ewing LLP
 Attention: Anthony Kang
 701 Brickell Avenue, FL 17
 Miami, Florida 33131

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (“Memorandum”) is made as of the ____ day of _____, 2023, by and between TOWN OF LAKE PARK, FLORIDA, a Florida municipal corporation, having an address of _____ (“Landlord”), and _____, a Florida limited liability company, having an address of _____ (“Tenant”).

WITNESSETH:

1. That by Ground Lease of even date hereof (the “Lease”), Landlord has demised and leased to Tenant and Tenant has rented from Landlord that certain real property located in Palm Beach County, Florida, as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Premises”), and the rights, easements and privileges granted to Tenant in the Lease.

2. The term of the Lease shall commence on _____, ____ (the “Commencement Date”) and shall expire at 12:00 Midnight on the ninety-ninth (99th) anniversary of the Commencement Date, unless sooner terminated as set forth in the Lease.

3. Pursuant to Florida Statutes Section 713.10 (2023), notice is hereby given that the Lease includes the following provision:

Tenant acknowledges and agrees that the interest of the Landlord in the Premises shall not be subject to liens for improvements made by the Tenant. Tenant shall not at any time permit any mechanics’, laborers’ or materialmen’s liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant’s agents, contractors or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant.

4. For all other terms and provisions of the Lease, reference is hereby made to the Lease itself, and all persons are hereby placed on notice of the existence of the Lease and of its terms and provisions. The Lease and exhibits thereto are hereby incorporated by reference in this Memorandum. In the event of any conflict between the provisions of this Memorandum and the Lease, the provisions of the Lease shall govern, control and prevail.

5. Upon the expiration or earlier termination of the Lease for any reason whatsoever, Landlord shall be entitled to unilaterally execute and record a termination of this Memorandum which shall terminate and release this Memorandum. Tenant acknowledges and agrees that Tenant shall not be required to join in or execute such termination and that such termination, as executed only by Landlord, shall be effective to terminate this Memorandum without the joinder or execution by Tenant.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be duly executed and sealed as of the date first above written.

TOWN OF LAKE PARK, FLORIDA

_____, **Attest;**
a Florida municipal corporation

By: _____
Mayor

By: _____
Town Clerk

Date: _____

Approved as to form and legal sufficiency

By: _____
Town Attorney

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of [___] physical presence or [___] online notarization this ____ day of _____, 2023, by _____ as Mayor of the Town of Lake Park, Florida, a Florida municipal corporation, on behalf of the Town. He/She is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public
My Commission Expires:

[SIGNATURES CONTINUE ON NEXT PAGE]

Witnesses:

TENANT:

_____ By: _____
 Print Name: _____ Print Name: _____
 Title: _____

 Print Name: _____

STATE OF _____)
)SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of [__] physical presence or [__] online notarization this ____ day of _____, 2023, by _____ as a/the _____ of _____, LLC, a _____ limited liability company, on behalf of said entity. He/She is personally known to me or has produced _____ as identification.

 Print Name: _____
 Notary Public
 My Commission Expires:

EXHIBIT "A"
LEGAL DESCRIPTION

[SEE ATTACHED]

Exhibit F

Form of Non-Disturbance and Attornment Agreement

Return to: (enclose self-addressed stamped envelope)

Name: _____

Address: _____

This Instrument Prepared by:

SPACE ABOVE THIS LINE FOR PROCESSING DATA

NON-DISTURBANCE AGREEMENT BY FEE MORTGAGEE AS TO A LEASEHOLD MORTGAGE(S)

THIS NON-DISTURBANCE AGREEMENT (this “**Agreement**”) by and between Town of Lake Park, Florida (“**Lessor**” or “**Town**”), having an address at _____, _____, having an address at _____ (“**Tenant**”), _____, having an address at _____ (“**Lender**”), and _____, having an address at _____ (“**Fee Mortgagee**”).

W I T N E S S E T H :

WHEREAS, Tenant is the lessee under that certain Ground Lease with the Lessor dated _____, as may be amended from time to time (the “**Lease**”) with respect to the “Premises” demised under the Lease; and

WHEREAS, Fee Mortgagee has extended a loan to the Town (as may be amended, modified, substituted, or replaced), referred to herein as the “**Fee Loan**.” The Fee Loan is secured by, among other things, a mortgage which encumbers the Town’s interest in the Lease and the Premises, as same may be amended from time to time, together with an assignment of leases (collectively, the “**Fee Mortgage**”); and

WHEREAS, pursuant to the terms of the Lease, Tenant has obtained and may in the future obtain certain loans (“**Loan(s)**”) from lender(s) selected by Tenant (each, together with each lender(s)’ respective successors and assigns, a “**Lender**”), which Loan(s) are and shall be secured by a leasehold mortgage(s) encumbering Tenant’s rights in and to the Lease and the Premises (“**Leasehold Mortgage**”). Notwithstanding anything herein to the contrary, any lender(s) selected by Tenant shall not become a “Lender” under this Agreement until such time as such lender has provided a Lender Notice, as provided in Section 5 of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

1. The recitations heretofore set forth are true and correct and are incorporated herein by this reference.

2. Fee Mortgagee, Town, Tenant and Lender (after the “**Lender Notice**,” as hereinafter defined, is provided for such Lender and after such Lender agrees to be bound by this Agreement) are individually a “**Party**” and collectively “**Parties**.”

3. If and as applicable, Tenant expressly acknowledges that Town has executed and delivered to Fee Mortgagee an Assignment of Leases and Rents (the “**Assignment of Leases**”), which assigns the Lease and the rent and all other sums due thereunder to Fee Mortgagee as security for the Fee Loan. For the avoidance of doubt, Fee Mortgagee expressly acknowledges and agrees that no property of any kind owned by Tenant (including, without limitation, any improvements, fixtures, personal property or other property owned by Tenant) are collateral for the Fee Loan and that Fee Mortgagee has no security interest in or pledge of any of Tenant’s property or any of its rights in the Lease (or derived therefrom other than any residual rights that the Town has to such assets commencing upon the expiration or earlier termination of the Lease or New Lease, as applicable). Tenant acknowledges that the interest of the Town under the Lease has been assigned to Fee Mortgagee solely as security for the purposes specified in said assignments, and Fee Mortgagee shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, except (i) as provided herein, or (ii) upon Fee Mortgagee exercising control over the Town’s interest in the Lease. Tenant further agrees that only upon receipt of a written notice from Fee Mortgagee of an event of default by the Town under the Fee Loan, Tenant will thereafter, if requested by Fee Mortgagee (and after Tenant notifies the Town of the request received from Fee Mortgagee), pay rent to Fee Mortgagee in accordance with the terms of the Lease. Town shall have no claim against Tenant for any amounts paid to Fee Mortgagee pursuant to any such notice. Fee Mortgagee hereby agrees that it will only send such a notice if in its good faith judgment an event of default has occurred and has not been cured. To the extent Fee Mortgagee previously sent a notice to Tenant of such event of a default requesting payment of rent be paid to Fee Mortgagee, then at such time as such event of default has been cured and the cure accepted by Fee Mortgagee, Fee Mortgagee shall notify the Tenant in writing to again pay Sublessor such rents. Notwithstanding the foregoing provisions or any other provision herein to the contrary, Tenant shall be under no obligation to pay any rent or perform any other obligation set forth in the Lease to Fee Mortgagee unless and until Tenant receives written notice

from Fee Mortgagee that the Town is in default under the Fee Loan and Fee Mortgagee is entitled to the rent under the Lease.

4. Tenant shall have the right to mortgage, assign, pledge and hypothecate its interest in the Lease to any Lender as security for Loan(s). In connection with any financing obtained by Tenant (regardless of whether structured as mortgage financing, mezzanine financing or another type of financing), Fee Mortgagee shall execute such documents Lender may reasonably request in order to facilitate such financing (“**Future Non-Disturbance Agreement**”). For the avoidance of doubt, Fee Mortgagee’s and the Town’s agreement to provide the Non-Disturbance Agreement contemplated in the Lease as referenced herein shall only be for the benefit of first lien lenders with respect to Tenant’s interests in the Lease or first lien lenders with respect to the ownership interests in Tenant and to the extent that there are any other subordinate sub-leasehold mortgages and/or subordinate liens given by Tenant as for any interest in Tenant, Fee Mortgagee and the Town shall have no obligation to provide the future Non-Disturbance Agreement to such parties.

5. Within a reasonable time after Tenant obtains a loan from Lender, Tenant shall notify the Town and Fee Mortgagee in writing (“**Lender Notice**”) of the following, to wit: (i) the name and address and other contact information of the Lender, and (ii) confirming to the Town and Fee Mortgagee that Tenant has executed and delivered to Lender the Leasehold Mortgage, if applicable, or security interest in the ownership interests in Tenant given to Lender, if applicable. Further, notwithstanding anything to the contrary contained herein, upon delivery of the Lender Notice, Lender shall be deemed to be bound by this Agreement, whereupon Lender shall be deemed to be a “Leasehold Mortgagee” and entitled to all of the protections afforded a “Leasehold Mortgagee” thereunder, as provided in this Agreement. The delivery of Lender’s Notice shall be deemed to be an agreement by such Lender of the obligations of Lender set forth herein.

6. Tenant and any Lender (to the extent it has provided a Lender Notice) shall provide Fee Mortgagee, in the manner provided for herein for giving of notices, a copy of each notice of default given to the Town in connection with the Lease, and Fee Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied any default of the Town under the Lease, so long as such remedy is completed within any notice or grace period provided under the Lease and prior to Tenant electing to terminate the Lease due to any non-monetary default. In connection with any non-monetary defaults, the Tenant hereby agrees that, provided Fee Mortgagee has commenced to cure such non-monetary default and is proceeding with commercially reasonable diligence to complete such cure, Fee Mortgagee shall have an additional period of time as may be reasonable to enable Fee Mortgagee to remedy, or cause to be remedied, any such non-monetary default in addition to the period given to the Town for remedying, or causing to be remedied, such non-monetary default, and Tenant shall accept performance by Fee Mortgagee as performance by the Town.

7. To the extent Fee Mortgagee or any other party (each a “**New Lessor**”) shall acquire the interest of the Town under the Lease, the following shall be binding upon New Lessor:

(i) So long as Tenant recognizes the New Lessor and Tenant is not in default under the Lease (beyond any period given to Tenant by the terms of the Lease to cure such default) and is paying rent to the New Lessor under the Lease, New Lessor shall not, whether in the exercise of any of its rights under the Lease or otherwise, disturb Tenant's possession of the

Premises or deprive Tenant of any right or privilege granted to or inuring to the benefit of Tenant under the Lease; nor shall Tenant be named as a party in any foreclosure proceeding except to the extent required by law.

(ii) New Lessor shall recognize and keep the Lease as a direct sublease between Tenant and New Lessor, without the necessity of executing a new lease. In such event, New Lessor shall succeed to the interest of the Town under the Lease, the Tenant shall attorn (subject to the terms of this Agreement) to the New Lessor, in each case to be effective and self-operative without the execution of any further instruments.

(iii) Notwithstanding the foregoing, upon the request of either New Lessor and/or Tenant, the other Party shall promptly execute and deliver a commercially reasonable instrument in recordable form (an "**Attornment and Recognition Agreement**") that (i) as to the Lease, evidences the foregoing attornment by Tenant to New Lessor, and (ii) evidences the recognition of the Lease as a direct Lease between New Lessor and Tenant.

(iv) At the option of the New Lessor (which may be exercised at any time after an Attornment and Recognition Agreement is executed by New Lessor and Tenant), the New Lessor may enter into a new lease with the Tenant for the Premises (a "**New Lease**"). The New Lease shall contain the exact same terms and conditions contained in the Lease, whereupon the New Lease shall replace the Lease and be deemed a replacement Lease between Tenant and the New Lessor, and a new Non-Disturbance Agreement (similar in form to this Agreement as to such New Lease) shall be executed by New Lessor and Tenant.

(v) After New Lessor, or its successors and assigns, shall succeed to the interest of the Town under the Lease (or enter into a New Lease), New Lessor and Tenant, or their respective successors and assigns, shall be bound to each other under all of the terms, covenants and conditions of each of the Lease or New Lease, if applicable, and Tenant and New Lessor shall, from and after such succession by New Lessor to the interest of the Town under each of the Lease (or the entry of New Lease, if applicable) shall each have the same remedies against each other, or their respective successors and assigns, for the breach of any agreement or covenant or duty contained in each of the Lease or New Lease, if applicable, might have had against the other under the Lease as if such parties had been the original lessor or lessee (as applicable) under the Lease, provided, however, notwithstanding anything in the Lease (or New Lease, if applicable) or in this Agreement to the contrary, New Lessor, its successors and assigns, shall not be:

a. bound by any rent, additional rent or other amounts which Tenant might have paid for more than the current month except the most recent payment of rent paid by Tenant as required under the Lease, or to the extent such money was actually received by New Lessor; or

b. accountable for any money deposited with Lessor for any matter, including, capital improvement reserves, except to the extent such money was actually received by New Lessor; or

c. liable for any indemnities of the Town under the Lease for any period prior to New Lessor becoming the lessor under the Lease or New Lease; or

d. liable for any act or omission of the Town (or its members, officers, managers, employees, contractors, or agents) that occurred prior to such party becoming the New Lessor (and additionally, Tenant agrees that any such act or omission is not a defense or excuse to Tenant's continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease; or

e. liable for the Town's breach of any agreement or covenant or duty contained in the Lease which occurred prior to the date the New Lessor succeeded to the interest of the Town (and additionally, Tenant agrees that no such breach is a defense or excuse to its continued performance under the Lease); provided, however, that except as otherwise expressly provided in this Agreement, New Lessor shall only be obligated for all obligations of the sublessor under the Lease to be performed from and after the date the New Lessor succeeded to the interest of the Town under the Lease.

Except as provided in this Agreement, Lessor and Tenant shall have their respective rights or remedies available to it under the Lease (or comparable provisions in the New Lease).

(vi) New Lessor shall, in the manner provided for herein for giving of notices, provide promptly to the Lender (to the extent it has provided a Lender Notice) a copy of each notice of default given by New Lessor to the Tenant in connection with the Lease or New Lease, if applicable.

(vii) Lender shall have the right, but not an obligation, to remedy or cause to be remedied any default of Tenant so long as such remedy is completed within any notice or grace period provided under the Lease or New Lease, if applicable, to Tenant as extended if Lender is diligently pursuing the completion of a non-monetary default of Tenant, as such extension is permitted under the Lease or New Lease, if applicable, and New Lessor shall accept performance by the Lender as performance by the Tenant under the Lease or New Lease, if applicable. Provided Lender satisfies the requirements of this Paragraph 7, any defaults by Tenant of any covenants and agreements which are not within the reasonable power of Lender or any nominee to perform shall not be enforced by New Lessor against Lender (but may be enforced against the Tenant), provided the same shall not be deemed to be a waiver of such obligations from and after the date Lender or its nominee acquires Tenant's interest in the Lease or New Lease, if applicable, or the interest in the Tenant, as applicable.

(viii) In case of a default by the Tenant under the Lease or New Lease, if applicable, beyond any applicable notice and cure period, other than a default in the payment of money and under such circumstances New Lessor having the right to terminate after all cure periods, if any, have expired, the New Lessor shall take no action to effect a termination of the Lease or New Lease, if applicable, by service of a notice or otherwise, without first giving Lender (to the extent it has provided a Lender Notice) a commercially reasonable time within which to either:

a. obtain possession of the Premises and the Tenant's improvements located thereon ("**Improvements**") (including possession by a receiver) and to cure such default in case of a default which is within the power of the Lender to cure, it being understood that the payment of money is within the Lender's power to cure, when such Lender has obtained possession of the Premises and the Improvements; or

b. initiate and complete foreclosure proceedings or otherwise acquire Tenant's leasehold interest under the Lease (or New Lease, as applicable), provided the New Lessor may seek to intervene and Lender consents to such intervention in said foreclosure proceedings and obtain an order authorizing the Lender to commence to cure such default as described by New Lessor and, if such order is obtained, Lender shall have a reasonable time thereafter to proceed diligently to cure such non-monetary defaults within its control to cure and to cure all monetary defaults and the New Lessor will not need to wait until the foreclosure proceedings are concluded. Upon issuance of such orders in the judicial proceedings and if Lender fails to diligently proceed to cure such default, New Lessor has the right to enter the Premises and cure such default, the cost and expenses of which shall be added to the Lease or New Lease, if applicable, as additional rent. Lender shall diligently proceed with the appointment of a receiver to operate and maintain the Premises under the Lease or New Lease, if applicable.

The provisions of Paragraph 7(viii) above are conditioned on the following: Lender, within the forty-five (45) days of receipt of a notice of default under the Lease or New Lease, if applicable, shall (i) notify New Lessor of its election to proceed with due diligence to promptly acquire possession of the Premises and any Improvements or to foreclose its Leasehold Mortgage or otherwise to extinguish Tenant's interest in the Lease or New Lease, if applicable; and (ii) deliver to New Lessor an instrument in writing duly executed and acknowledged, whereby the Lender agrees that (x) during the period Lender is enforcing its remedies and/or during the pendency of any foreclosure or other proceeding and until the interest of Tenant in the Lease or New Lease, if applicable, shall terminate, as the case may be, it will pay or cause to be paid to New Lessor (on behalf of Tenant) all monetary obligations of Tenant including rent (based on gross revenue Lender is able to collect), payment of taxes and insurance then due and from time to time becoming due under the Lease or New Lease, if applicable, which is to be remitted to New Lessor giving credit, however, for any net income actually collected by New Lessor (as applicable) in connection with the Premises, and (y) if delivery of possession of the Premises and the Improvements shall be made to Lender or its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all covenants and agreements contained in the Lease or New Lease, if applicable, on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid except such covenants and agreements which are not within the reasonable power of the Lender or such nominee to perform but the payment of rent (based on gross revenue Lender is able to collect), taxes and insurance shall be deemed activity within the power of the Lender or its nominee to perform. Upon such extinguishment of Tenant's interest in the Lease or New Lease, if applicable, and such performance by such holder or such nominee, or by any purchaser of the Tenant's interest in the Lease pursuant to any foreclosure proceedings, New Lessor's rights to serve notice of election to end the term of the Lease or New Lease, if applicable, based on any non-monetary default which is not within the

power of such holder or nominee or such purchaser to perform, shall be deemed to be and shall be waived. If prior to any sale pursuant to any proceedings brought in foreclosure of the Loan(s), or if, prior to the date on which Tenant's interest in the Lease or New Lease, if applicable, shall otherwise be extinguished, the default in respect of which New Lessor shall have given notice shall have been remedied and possession of the Premises and the Improvements restored to Tenant, the obligations of the Lender pursuant to the instrument referred to in clause (x) of this paragraph shall be null and void (subject to a new right to cure for other defaults) and of no further force and effect. Nothing herein contained shall affect the right of New Lessor, upon the subsequent occurrence of any default by Tenant, to exercise any right or remedy reserved in the Lease or New Lease, if applicable, to New Lessor, subject to the rights of the Lender pursuant to this Agreement with respect to such default. Notwithstanding anything contained in this Agreement to the contrary, New Lessor shall not be required to waive monetary defaults such as payment of rent, taxes, insurance and other financial obligations under the Lease or New Lease, if applicable, giving credit, however, for any net income actually collected by New Lessor in connection with the Premises. Further, both parties agree payment of rent (based on gross rent Lender is able to collect), and payment of taxes, insurance and other monetary obligations shall never be deemed "not within the reasonable power of the Lender or such nominee to perform" or a default not susceptible of being cured and upon Lender or its designee becoming the Tenant, such party shall perform the deferred maintenance and other obligations within its reasonable control to the extent such matters could not be cured previously.

(ix) Upon (a) a foreclosure or deed in lieu of foreclosure, whereby the Tenant's interest in the Lease or New Lease, if applicable, is transferred to the Lender or foreclosure of ownership interests in Tenant or a transfer in lieu of foreclosure of ownership interests in Tenant, or its first assignee or (b) if such Lender is unable (despite commercially reasonable efforts to do so) to perform the cure within its cure period as provided in Section 7 (xi) and the Lease or New Lease, if applicable, is terminated or (c) if New Lessor shall give notice thereof to the Lender and in either of such cases, upon written request by the Lender given to New Lessor within thirty (30) days after such foreclosure (as provided in Section 7(xii)(a)) or the notice from New Lessor to the Lender of the termination of the Lease or New Lease, if applicable (as provided in Section 7(xii)(b)) to enter a "New Lease" (as hereinafter defined), New Lessor shall enter into and deliver a new lease ("**New Lease**") of the Premises with the Lender or its designee for the remainder of the term of the Lease or New Lease, if applicable, upon the exact same terms and conditions as contained in the Lease or New Lease, if applicable, including all right to the extensions thereof and dated as of the date of termination of the Lease or New Lease, if applicable, and convey to the Lender (or its designee) by quit claim bill of sale, a term of years in and to the Improvements, reserving to New Lessor the reversion of title to the Improvements upon the termination of the New Lease. The estate of the Lender (or its designee) as lessee under the New Lease shall have priority equal to the estate of the Tenant under the Lease or New Lease, if applicable (that is, there shall be no charge, lien or burden upon the Premises prior to or superior to the estate granted by such New Lease which was not prior to or superior to the estate of the Tenant under the Lease or New Lease, if applicable, as of the date immediately preceding the date the Lease or New Lease, if applicable, went in default. The quit claim bill of sale to the Improvements shall recite that the grantee holds title to the Improvements only so long as the New Lease shall continue in full force and effect, that upon termination of the New Lease, title to the Improvements shall revert to New Lessor automatically without payment. Nothing herein contained shall be deemed to impose any

obligation upon New Lessor or to cause the delivery of physical possession of the Premises and the Improvements to the Lender or its designee or to disavow any recognition of the Lease or New Lease, if applicable, or the rights of the Tenant pursuant to the terms of the Lease or New Lease, if applicable. The Lender or its designee shall pay all reasonable expenses, including reasonable attorneys' fees, incident to the execution and delivery of such New Lease and quit claim bill of sale to the extent requested by the Lender. If there be more than one (1) Leasehold Mortgage, the right to request and obtain a New Lease shall be limited solely to the Lender having the highest priority lien. New Lessor reserves the right to require a written legal opinion, at Lender's expense, as to whether or not such Leasehold Mortgage is a first lien on the Tenant's rights under the Lease or New Lease, if applicable.

However, if the Leasehold Mortgage is foreclosed, the purchaser who shall have acquired the Tenant's leasehold estate at the foreclosure sale shall execute and deliver such evidence of acquiring such leasehold estate to New Lessor. If Lender is the purchaser, it may assign its interest in the Lease or New Lease, if applicable, to any person, firm, corporation or entity designated by it who satisfies the minimum standard as expressly specified in the Lease or New Lease, if applicable, and such assignee shall execute and deliver such assignment to New Lessor in form reasonably acceptable to New Lessor, whereupon the Lender shall have no liability or obligation thereunder.

8. (a) Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable) the Town and Tenant, shall not consent to or accept any voluntary cancellation, termination or surrender of the Lease (other than to enforce a default thereunder not cured within the applicable cure period). Without the prior written consent of Fee Mortgagee (while its lien encumbers the Town's interest in the Lease or New Lease, if applicable), which consent shall not be unreasonably withheld, conditioned or delayed, the Town and Tenant shall not, in any material respect, modify or amend the Lease or New Lease, if applicable, which materially changes the term, the rent, or otherwise materially increases the obligations of the Town or material decreases the obligations of Tenant under the Lease or New Lease, if applicable (a "**Lease Modification**"). In the event the Town sends its request for approval of a Lease Modification to Fee Mortgagee as a "Time Sensitive Request of Lender", then the Lender shall be deemed to have approved such request if the Fee Mortgagee does not disapprove same and specify the basis for such disapproval within twenty (20) days of request.

(b) Without the prior written consent of Lender (to the extent it has provided a Lender Notice and while its lien encumbers any Tenant interest in the Lease or New Lease, if applicable), the Town and Tenant shall not (i) consent to or accept any violation, cancellation, termination or surrender of the Lease or New Lease, if applicable (other than to enforce a default thereunder not cured within the applicable cure period (but subject to the terms hereof)), or (ii) modify or amend the Lease or New Lease, if applicable, in any material manner which changes the term, the rent, or otherwise materially increases the obligations of Tenant or material decreases the obligations of the Town or the rights of Tenant under the Lease or New Lease, if applicable (in each case, a "**Material Lease Modification**"). In the event the Town or Tenant sends a request to Lender for approval of a Material Lease Modification, any such consent of Lender shall not be

unreasonably withheld and shall be subject to the terms and provisions attached hereto as Exhibit A.

9. The Town and New Lessor agree that the restrictions on "Assignment" (as defined in the Lease or New Lease, if applicable) do not apply to either (a) an assignment of the Leasehold interest of Tenant as it relates to Lender (to the extent it has provided a Lender Notice) pursuant to the Leasehold Mortgage or the foreclosure of the Leasehold Mortgage or assignment in lieu of the foreclosure of the Leasehold Mortgage or (b) a pledge of ownership interests in the Tenant as it relates to Lender by its owner or the foreclosure on the ownership interests of Tenant or the assignment in lieu of the foreclosure of ownership interests in the Tenant, provided however, any subsequent assignment by Lender to a third party shall be subject to compliance with the minimum standards relating to an assignee as specified in the Lease or New Lease, if applicable.

10. The parties acknowledge that any Loan(s) obtained by Tenant are leasehold security interests on the Tenant's interest in the Premises and do not encumber or subordinate the fee simple title of the Town, the leasehold interest of Lessor, or any lien and/or leasehold interest held by Fee Mortgagee.

11. Any notice required or permitted to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be either hand delivered or sent by certified mail, postage prepaid, return receipt requested. Such written notice shall be addressed as follows:

As to Fee Mortgagee:

With a copy to:

As to Town:

With a copy to:

As to Lender:

The name and address of the Lender and its
representatives as set forth in the Lender Notice

As to Tenant:

unless the address is changed by the party by like notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid and shall be deemed delivered three (3) business days after being properly mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, notices, requests or demands or other communications referred to in this Agreement may be sent by email (except that requests for Material Lease Modification approvals whereby the provisions of Exhibit A would be applicable must always be sent by certified mail return receipt requested or a nationally recognized delivery service such as Federal Express in addition to email) or by nationally recognized delivery service such as Federal Express, but shall only be deemed to have been given when received

12. This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by all Parties to this Agreement.

13. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed an original and all of which shall be deemed one and the same instrument. Facsimile transmission signatures of this Agreement shall be deemed to be original signatures.

14. This Agreement is governed by Florida law and Palm Beach County, Florida is the agreed upon venue.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signature Pages to Follow]

WITNESSES:

LESSOR:

Town of Lake Park Florida

 Print Name: _____

By: _____

Name: _____

Title: _____

 Print Name: _____

Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

 Notary Public

 Typed, print d or stamped name of Notary Public

My Commission Expires:

TENANT:

Date: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

Notary Public

Typed, print d or stamped name of Notary Public

My Commission Expires:

LENDER:

Date:

602

FEE MORTGAGEE:

Date:

STATE OF _____)
) SS:
COUNTY OF _____)

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 means of ☐ physical presence or ☐ online notarization by _____, the _____ of _____, a _____, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2023.

Notary Public

Typed, print d or stamped name of Notary Public

My Commission Expires:

Exhibit A

If Tenant makes a written request of Lender in accordance with the terms of this Agreement to make a material modification or amendment to the Lease, accompanied by all such background information and explanations as may be reasonably necessary for Lender to determine whether to consent to or approve the request, and does not receive a consent, approval or rejection from Lender within five (5) business days after Lender's receipt of such request, then Tenant may provide Lender with a second written notice of any such request, with a copy of such first request, and if such second written notice includes, printed in capital letters of boldface type and at least 12 point font, a legend substantially to the following effect:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS (OR LONGER PERIOD AS PROVIDED IN THAT CERTAIN NON-DISTURBANCE AGREEMENT DATED AS OF _____) FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED CONSENT OR APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE ADDRESSOR.”

and if the foregoing legend is included by the Tenant in the second written request to Lender, such request shall be deemed to have approved or consented to the item for which Tenant sought Lender's consent or approval for all purposes hereunder unless Lender denies the such request within ten (10) calendar days of Lender's receipt of such second written request; provided, however, that if Lender in writing notifies Tenant (including the basis for the need for additional time) within such ten (10) calendar day period that the nature of the request is such that more than ten (10) calendar days are required in order for the Lender to properly assess the request and respond to Tenant (including without limitation, as a result of loan approval authority for the requested change being a prerequisite to Lender's and/or any Loan participant's response to the request), then such period shall be extended for up to an additional twenty (20) calendar days (i.e. a total of thirty (30) calendar days after Lender's receipt of the second written request) for Lender and/or any Loan participant to properly assess the request and respond to Tenant so long as Lender and/or such Loan participant(s) have commenced their assessment within such ten (10) calendar days period and thereafter diligently conducts their review and determination of whether or not to approve or consent to such request.



Town of Lake Park Town Commission

Agenda Request Form

Meeting Date: May 15, 2024
Originating Department: Special Events
Agenda Title: Red, White & Blue Sunset Celebration Event Discussion

Approved by Town Manager: Bambi McKibbon-Turner
 Digitally signed by Bambi McKibbon-Turner
 DN: cn=Bambi McKibbon-Turner, o=Town of Lake Park,
 ou=Assistant Town Manager/Human Resources
 Director, email=bturner@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:17:00 -04'00'

Cost of Item: _____ **Funding Source:** Special Events Department Budget
Account Number: 600-48046 **Finance Signature:** Barbara A. Gould
 Digitally signed by Barbara A. Gould
 DN: cn=Barbara A. Gould, o=Town of Lake Park, ou=Finance Dept,
 email=bgould@lakeparkflorida.gov, c=US
 Date: 2024.05.08 16:07:28 -04'00'

Advertised: _____
Date: _____ **Newspaper:** _____

Attachments: Red, White & Blue Sunset Celebration Budget – June 2024

Please initial one:
 _____ Yes I have notified everyone
X Not applicable in this case

Summary Explanation/Background:

The Town hosts a patriotic themed Red, White & Blue Sunset Celebration each year on the last Friday of the month at the Lake Park Harbor Marina. This year's event is scheduled for Friday, June 28 from 6:00 PM – 9:00 PM in our new location at Kelsey Park. There will be live entertainment from Mischief Band, a variety of food, art and craft vendors, as well as a cash bar with happy hour prices. Because this event has moved from Lake Park Harbor Marina, we have also had to include funding for additional light towers, restrooms and power sources.

During the April 16 Commission Meeting, staff was directed to provide options to help make this a more family-friendly event by providing face painting, games/activities, free popcorn or ice cream and to begin the start time at 5:00 PM. Attached, we have provided the initial budget for the event as well as some additional options to consider.

At this time, staff would like direction from the Town Commission on how to move forward with the event.

Recommended Motion: No Motion Needed

CURRENT MONTHLY EXPENSES	COMPANY	AMOUNT
LIVE ENTERTAINMENT	MISCHIEF BAND	\$ 1,200.00
STAGE & LIGHTING	ESS PRODUCTIONS	\$ 1,500.00
SOUND EQUIPMENT & TECH	ESS PRODUCTIONS	\$ 1,650.00
RESTROOM CLEANING	IMAGE CLEANING	\$ 125.00
RESTROOM ATTENDANT	IMAGE CLEANING	\$ 75.00
PORTABLE RESTROOMS	PORTA POTTY TO GO	\$ 4,428.00
LIGHT TOWERS	UNITED RENTALS	\$ 800.00
TOTAL		\$ 8,578.00
ADDITIONAL OPTIONS	COMPANY	AMOUNT
FACE PAINTING	JET SETV F.C.	\$ 300.00
BOUNCE HOUSE WITH SLIDE	JUPITER BOUNCE	\$ 900.00
BOUNCE HOUSE WITH OBSTACLE COURSE	JUPITER BOUNCE	\$ 1,450.00
POPCORN MACHINE & SERVICE (200 SERVINGS)	JUPITER BOUNCE	\$ 700.00
TOTAL		\$ 3,350.00