

CITY OF WESTLAKE



AGENDA

City Council Regular Meeting

Tuesday, August 02, 2022 at 6:00 PM

Westlake Council Chambers
4005 Seminole Pratt Whitney Road
Westlake, Florida 33470

CITY COUNCIL:

JohnPaul O'Connor, Mayor
Greg Langowski, Vice Mayor
Pilar Valle Ron, Council Member – Seat 1
Julian Martinez, Council Member – Seat 2
Charlotte Leonard, Council Member – Seat 3

CITY STAFF:

Ken Cassel, City Manager
Zoie P. Burgess, CMC, City Clerk
Donald J. Doody, Esq., City Attorney
Nilsa Zacarias, AICP, Planning and Zoning Director
Suzanne Dombrowski, P.E., ENV SP, City Engineer

[TENTATIVE: SUBJECT TO REVISION]

This is a Public Meeting and members of the public may attend in-person; however, the option to attend and participate via Communications Media Technology is available via the Cisco WebEx Platform and may be accessed as follows:

1. Join the Webex meeting from your computer, tablet or smartphone at the following link:
<https://cityofwestlake.my.webex.com/>

Meeting ID: 2632 888 9851

Password: hello

2. Participants may also dial in using your phone with any of the following number(s):

United States Toll: +1-408-418-9388

Meeting ID: 2632 888 9851

For participants attending the meeting via WebEx, public comments will be accepted via an electronic comment card, at least 24 hours prior to the public meeting and also acknowledged during the meeting when participants utilize the “raise your hand” feature during the designated time.

Procedures for Public Comment are also provided via the City website:
<https://www.westlakegov.com/cityclerk/page/covid-19-public-meetings>

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

ADDITIONS, DELETIONS OR MODIFICATIONS, AND APPROVAL OF AGENDA

PUBLIC COMMENTS AND REQUESTS

This section of the agenda allows for comments from the public to speak. Each speaker will be given a total of three (3) minutes to comment. A public comment card should be completed and returned to the City Clerk. When you are called to speak, please go to the podium or unmute your device, and prior to addressing Council, state your name and address for the record.

CONSENT AGENDA

This section of the agenda consists of routine or administrative items that require final approval by the City Council and may be approved in its entirety by a single motion. There will be no discussion of these items unless a Council Member, requests such, in which event, the item will be removed from the Consent Agenda and considered on a future agenda.

- A. Financial Report - June

PRESENTATIONS/PROCLAMATIONS

- A. NONE

PUBLIC HEARING

- A. NONE

NEW BUSINESS

- A. **FIRST READING:** Ordinance 2022-08 – Non-Conforming Lots, Uses, and Structures.

Submitted By: Planning & Zoning

ORDINANCE NO. 2022-08

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING SECTION _____ ENTITLED “NON-CONFORMING LOTS, USES, AND STRUCTURES”; PROVIDING FOR REGULATIONS FOR LOTS, USES, AND STRUCTURES LAWFULLY EXISTING AT THE TIME OF AN AMENDMENT TO THE CITY’S CODE OF ORDINANCES AND THEREAFTER DEEMED NON-CONFORMING; PROVIDING FOR CODIFICATION; PROVIDING FOR A

CONFLICTS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

- B. FIRST READING:** Ordinance 2022-09 – Granting Florida Public Utilities a Non-Exclusive Franchise

Submitted By: Administration

ORDINANCE 2022-09

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF 30 YEARS TO SELL, DISTRIBUTE, TRANSPORT, AND TRANSMIT NATURAL, MANUFACTURED, OR MIXED GAS IN THE CITY OF WESTLAKE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE UPON FINAL PASSAGE

- C.** Education and Youth Advisory Board - 1 Vacancy - Unexpired Term, Ending September 2023

Submitted By: City Clerk

- D.** Second addendum to professional services agreement between City of Westlake and Chen Moore & Associates

Submitted By: Administration

RESOLUTION NO. 2022-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A SECOND ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WESTLAKE AND CHEN MOORE & ASSOCIATES, INC.; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

- E.** Third Addendum to the Law Enforcement Service Agreement

Submitted By: Administration

RESOLUTION NO. 2022-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT BETWEEN THE CITY OF WESTLAKE AND RIC L. BRADSHAW, SHERIFF OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

- F.** Discussion - Westlake 5k Turkey Trot

CITY COUNCIL COMMENTS

- A. Councilwoman Charlotte Leonard
- B. Councilman Julian Martinez
- C. Councilwoman Pilar Valle Ron
- D. Vice Mayor Greg Langowski
- E. Mayor JohnPaul O'Connor

REPORT - STAFF

- [A.](#) Palm Beach County Fire Rescue - Monthly Report: June
Submitted By: District Chief Phillip Olavarria
For Informational Purposes Only

REPORT - CITY ATTORNEY

REPORT - CITY MANAGER

PUBLIC COMMENTS AND REQUESTS

This section of the agenda allows for comments from the public to speak. Each speaker will be given a total of three (3) minutes to comment. A public comment card should be completed and returned to the City Clerk. When you are called to speak, please go to the podium or unmute your device, and prior to addressing Council, state your name and address for the record.

ADJOURNMENT

Next Meeting (Subject to Change or be Cancelled):September 6, 2022

NOTICE: If a person, firm or corporation decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, you will need a record of the proceedings, and you 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. (The above notice is required by State Law. Anyone desiring a verbatim transcript shall have the responsibility, at his own cost, to arrange for the transcript). The City of Westlake does not prepare or provide such verbatim record.

In accordance with the Americans with Disabilities Act, persons who need an accommodation in order to attend or participate in this meeting should contact the City Clerk at (561) 530-5880 at least three (3) business days prior to the meeting in order to request such assistance.

AGENDA POSTED: July 28, 2022

File Attachments for Item:

A. Financial Report - June



MEMORANDUM

TO: Members of the City Council, City of Westlake
FROM: Steven Fowler, Accountant; Kadem Ramirez, Accounting Supervisor
CC: Ken Cassel, City Manager
DATE: July 13, 2022
SUBJECT: June Financial Report

Please find attached the June 2022 financial report. During your review, please keep in mind that the goal is for revenue to meet or exceed the year-to-date budget and for expenditures to be at or below the year-to-date budget. An overview of the City's funds is provided below. Should you have any questions or require additional information, please contact me at Steven.Fowler@inframark.com.

General Fund

- Total Revenues through June were approximately 74% of the annual budget, including collections of the FY2022 Ad Valorem Tax of approximately 97%. The annual budget includes revenue from a funding agreement with the Developer. The Developer is invoiced quarterly for any year-to-date excess of actual expenditures over actual revenue.
- Total Expenditures through June were approximately 56% of the annual budget.

Special Revenue Fund – Housing Assistance Program

- Total Revenues through June were approximately 242% of the annual budget, which was a result of a higher than anticipated rate of construction. A donation of \$1,500 per Single Family Residence building permit is paid into the Housing Assistance Program.

Special Revenue Fund – Comprehensive Planning Services

- Total Revenues through June were approximately 82% of the annual budget.
- Total Expenditures through June were approximately 70% of the annual budget.

City of Westlake

Financial Report

June 30, 2022



Table of Contents

<u>FINANCIAL STATEMENTS</u>	Page #
Balance Sheet	1 - 2
Statement of Revenues, Expenditures and Changes in Fund Balance	
General Fund	3 - 5
Special Revenue Fund (Housing Assistance Program)	6
Special Revenue Fund (Comprehensive Planning Services)	7
 <u>SUPPORTING SCHEDULES</u>	
Cash and Investment Report	8

City of Westlake

Financial Statements

June 30, 2022

Balance Sheet
June 30, 2022

ACCOUNT DESCRIPTION	GENERAL FUND	SPECIAL REVENUE FUND - HOUSING ASSISTANCE PROGRAM	SPECIAL REVENUE FUND - COMPREHENSIVE PLANNING SVCS	TOTAL
<u>ASSETS</u>				
Current Assets				
Cash - Checking Account	\$ 1,985,100	\$ -	\$ -	\$ 1,985,100
Assessments Receivable	44,653	-	-	44,653
Due From Other Funds	-	-	2,133,242	2,133,242
Investments:				
Money Market Account	2,024,242	2,697,959	-	4,722,201
Deposits	666	-	-	666
Total Current Assets	4,054,661	2,697,959	2,133,242	8,885,862
Noncurrent Assets				
Mortgages Receivable	-	587,722	-	587,722
Total Noncurrent Assets	-	587,722	-	587,722
TOTAL ASSETS	\$ 4,054,661	\$ 3,285,681	\$ 2,133,242	\$ 9,473,584
<u>LIABILITIES</u>				
Current Liabilities				
Accounts Payable	\$ 96,312	\$ -	\$ 115,064	\$ 211,376
Accrued Expenses	11,800	-	49,900	61,700
DBPR surcharge	5,837	-	-	5,837
DCA surcharge	8,463	-	-	8,463
Impact Fees	466,461	-	-	466,461
Unearned Revenue	78,609	-	-	78,609
Due To Other Districts	8,929	-	-	8,929
Deferred Revenue-Developer Submittals (Minto)	-	-	29,779	29,779
Due To Other Funds	2,133,242	-	-	2,133,242
Total Current Liabilities	2,809,653	-	194,743	3,004,396
Long-Term Liabilities				
Deferred Inflow of Resources	44,653	-	-	44,653
Total Long-Term Liabilities	44,653	-	-	44,653
TOTAL LIABILITIES	2,854,306	-	194,743	3,049,049

Balance Sheet
June 30, 2022

ACCOUNT DESCRIPTION	GENERAL FUND	SPECIAL REVENUE FUND - HOUSING ASSISTANCE PROGRAM	SPECIAL REVENUE FUND - COMPREHENSIVE PLANNING SVCS	TOTAL
FUND BALANCES				
Nonspendable:				
Deposits	641	-	-	641
Restricted for:				
Special Revenue	-	3,285,681	1,938,499	5,224,180
Unassigned:				
	1,199,714	-	-	1,199,714
TOTAL FUND BALANCES	\$ 1,200,355	\$ 3,285,681	\$ 1,938,499	\$ 6,424,535
TOTAL LIABILITIES & FUND BALANCE	\$ 4,054,661	\$ 3,285,681	\$ 2,133,242	\$ 9,473,584

Statement of Revenues, Expenditures and Changes in Fund Balances
For the Period Ending June 30, 2022

<u>ACCOUNT DESCRIPTION</u>	<u>ANNUAL ADOPTED BUDGET</u>	<u>YEAR TO DATE BUDGET</u>	<u>YEAR TO DATE ACTUAL</u>	<u>VARIANCE (\$) FAV(UNFAV)</u>
<u>REVENUES</u>				
Interest - Investments	\$ -	\$ -	\$ 1,877	\$ 1,877
Ad Valorem Taxes	1,838,592	1,815,620	1,785,693	(29,927)
Ad Valorem Taxes - Discounts	(73,544)	(73,544)	(69,673)	3,871
Discretionary Sales Surtaxes	69,700	52,275	-	(52,275)
FPL Franchise	110,300	82,725	146,125	63,400
Solid Waste	-	-	9,616	9,616
Electricity	113,600	85,200	137,818	52,618
Water	41,500	31,125	36,690	5,565
Gas	34,600	25,950	41,366	15,416
Communication Services Taxes	36,200	27,150	32,657	5,507
Occupational Licenses	6,100	4,575	15,385	10,810
Building Permits - Admin Fee	62,100	46,575	72,411	25,836
Licenses, Fees & Permits	-	-	600	600
State Revenue Sharing Proceeds	17,200	12,900	9,476	(3,424)
Alcoholic Beverage License	-	-	477	477
Shared Rev - Other Local Units	-	-	454	454
Administrative Fees	245,400	184,050	9,740	(174,310)
Other Public Safety Chrgs/Fees	2,400	1,800	3,881	2,081
Garbage/Solid Waste Revenue	29,100	21,825	178,320	156,495
Penalties	-	-	9,000	9,000
Other Operating Revenues	5,400	4,050	10,284	6,234
Event Sponsors	-	-	68,350	68,350
Judgements and Fines	-	-	483	483
Interest - Tax Collector	-	-	161	161
Special Assmnts- Tax Collector	232,600	229,479	212,579	(16,900)
Special Assmnts- Discounts	(9,300)	(9,300)	(1,302)	7,998
Developer Contribution	930,152	404,254	-	(404,254)
Lien Search Fee	1,300	975	7,838	6,863
TOTAL REVENUES	3,693,400	2,947,684	2,720,306	(227,378)

EXPENDITURES

Legislative

Mayor/Council Stipend	110,400	82,800	79,443	3,357
FICA Taxes	8,400	6,300	6,077	223
ProfServ-Legislative Expense	24,000	18,000	-	18,000
Telephone, Cable & Internet Service	-	-	457	(457)
Public Officials Insurance	4,400	4,400	3,125	1,275
Misc-Election Fee	-	-	600	(600)
Misc-Event Expense	63,800	63,800	74,869	(11,069)
Council Expenses	15,000	11,250	10,493	757
Dues, Licenses, Subscriptions	1,400	1,400	896	504
Total Legislative	227,400	187,950	175,960	11,990

Statement of Revenues, Expenditures and Changes in Fund Balances
For the Period Ending June 30, 2022

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
<u>City Manager</u>				
Contracts-City Manager	251,900	188,925	155,553	33,372
Office Supplies	14,900	11,175	4,477	6,698
Dues, Licenses, Subscriptions	3,900	2,397	1,782	615
Cap Outlay - Equipment	-	-	1,855	(1,855)
Cap Outlay - Office Computers	-	-	6,306	(6,306)
Total City Manager	270,700	202,497	169,973	32,524
<u>City Clerk</u>				
ProfServ-Web Site Maintenance	10,600	9,450	7,102	2,348
Contracts-City Clerk	206,000	154,500	154,500	-
Postage and Freight	1,000	750	745	5
Printing	19,400	14,550	2,709	11,841
Legal Advertising	31,200	23,400	10,375	13,025
Dues, Licenses, Subscriptions	10,000	9,459	7,478	1,981
Total City Clerk	278,200	212,109	182,909	29,200
<u>Finance</u>				
Auditing Services	5,300	5,300	5,250	50
Contracts-Finance	95,500	71,625	60,501	11,124
Total Finance	100,800	76,925	65,751	11,174
<u>Legal Counsel</u>				
ProfServ-Legal Services	275,000	206,250	65,438	140,812
Total Legal Counsel	275,000	206,250	65,438	140,812
<u>Other Administrative Services</u>				
ProfServ-Info Technology	195,100	146,325	153,571	(7,246)
ProfServ-Compliance Service	25,000	18,750	-	18,750
Contracts-Admin. Service	257,000	192,750	152,333	40,417
Misc-Public Relations	75,000	56,250	21,600	34,650
Misc-Assessment Collection Cost	2,300	2,269	730	1,539
General Government	90,000	67,500	50,858	16,642
Emergency Comm. Program	25,000	18,750	-	18,750
Total Other Administrative Services	669,400	502,594	379,092	123,502
<u>Facility Services</u>				
Telephone, Cable & Internet Service	13,200	9,900	11,432	(1,532)
Lease - Copier	16,000	12,000	11,051	949
Lease - Building	86,700	65,025	500	64,525
Insurance (Liab,Auto,Property)	4,500	4,500	5,745	(1,245)
Miscellaneous Services	1,200	900	1,462	(562)
Cleaning Services	36,500	27,375	18,087	9,288
Principal-Capital Lease	8,500	6,287	5,546	741
Interest-Capital Lease	1,700	1,364	1,313	51
Total Facility Services	168,300	127,351	55,136	72,215

Statement of Revenues, Expenditures and Changes in Fund Balances
For the Period Ending June 30, 2022

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
<u>Community Services</u>				
Contracts-Solid Waste	248,600	186,450	336,884	(150,434)
Contracts-Sheriff	656,500	492,375	487,502	4,873
Electricity	98,600	73,950	98,499	(24,549)
R&M-Community Maintenance	27,500	20,625	20,625	-
Operating Supplies	6,100	4,575	30,815	(26,240)
Total Community Services	1,037,300	777,975	974,325	(196,350)
<u>Capital Expenditures & Projects</u>				
Capital Improvements	50,000	50,000	-	50,000
Total Capital Expenditures & Projects	50,000	50,000	-	50,000
<u>Other Fees and Charges</u>				
Misc-Contingency	151,400	113,550	6,663	106,887
Total Other Fees and Charges	151,400	113,550	6,663	106,887
<u>Reserves</u>				
1st Quarter Operating Reserves	264,900	198,675	-	198,675
Reserve - Buildings	200,000	150,000	-	150,000
Total Reserves	464,900	348,675	-	348,675
TOTAL EXPENDITURES & RESERVES	3,693,400	2,805,876	2,075,247	730,629
Excess (deficiency) of revenues				
Over (under) expenditures	-	141,808	645,059	503,251
Net change in fund balance	\$ -	\$ 141,808	\$ 645,059	\$ 503,251
FUND BALANCE, BEGINNING (OCT 1, 2021)	555,296	555,296	555,296	
FUND BALANCE, ENDING	\$ 555,296	\$ 697,104	\$ 1,200,355	

Statement of Revenues, Expenditures and Changes in Fund Balances
For the Period Ending June 30, 2022

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
<u>REVENUES</u>				
Interest - Investments	\$ 3,800	\$ 2,850	\$ 3,069	\$ 219
Donations	300,000	225,000	732,528	507,528
TOTAL REVENUES	303,800	227,850	735,597	507,747
<u>EXPENDITURES</u>				
<u>Public Assistance</u>				
Misc-Admin Fee (%)	21,000	15,750	9,740	6,010
Assistance Program	282,800	212,100	-	212,100
Total Public Assistance	303,800	227,850	9,740	218,110
TOTAL EXPENDITURES	303,800	227,850	9,740	218,110
Excess (deficiency) of revenues Over (under) expenditures	-	-	725,857	725,857
<u>OTHER FINANCING SOURCES (USES)</u>				
Interest Income	-	-	12	12
TOTAL FINANCING SOURCES (USES)	-	-	12	12
Net change in fund balance	\$ -	\$ -	\$ 725,869	\$ 725,869
FUND BALANCE, BEGINNING (OCT 1, 2021)	2,559,812	2,559,812	2,559,812	
FUND BALANCE, ENDING	\$ 2,559,812	\$ 2,559,812	\$ 3,285,681	

Statement of Revenues, Expenditures and Changes in Fund Balances
For the Period Ending June 30, 2022

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	VARIANCE (\$) FAV(UNFAV)
REVENUES				
Building Permits	\$ 1,561,100	\$ 1,170,825	\$ 1,400,409	\$ 229,584
Reinspection Fees	24,600	18,450	2,550	(15,900)
Building Permits - Surcharge	3,500	2,625	4,894	2,269
Other Building Permit Fees	30,000	22,500	58,290	35,790
Building Permits - Admin Fee	87,900	65,925	108,233	42,308
Engineering Permits	374,600	280,950	361,931	80,981
Planning & Zoning Permits	301,700	226,275	35,524	(190,751)
Developer Contribution	25,000	18,750	-	(18,750)
TOTAL REVENUES	2,408,400	1,806,300	1,971,831	165,531
EXPENDITURES				
Comprehensive Planning				
ProfServ-Engineering	352,600	264,450	244,502	19,948
ProfServ-Info Technology	170,900	128,175	55,673	72,502
ProfServ-Legal Services	-	-	49,378	(49,378)
ProfServ-Planning/Zoning Board	301,700	226,275	203,295	22,980
ProfServ-Consultants	22,000	16,500	-	16,500
ProfServ-Building Permits	1,258,200	943,650	1,020,535	(76,885)
Outside Legal Services	-	-	875	(875)
Telephone, Cable & Internet Service	1,100	825	3,553	(2,728)
Lease - Copier	5,100	3,825	4,125	(300)
Lease - Building	43,400	32,550	-	32,550
Printing	1,800	1,350	340	1,010
Miscellaneous Services	-	-	1,308	(1,308)
Misc-Admin Fee (%)	224,400	168,300	84,913	83,387
Office Supplies	2,200	1,650	4,458	(2,808)
Cleaning Services	-	-	12,000	(12,000)
Capital Improvements	25,000	25,000	-	25,000
Total Comprehensive Planning	2,408,400	1,812,550	1,684,955	127,595
TOTAL EXPENDITURES	2,408,400	1,812,550	1,684,955	127,595
Excess (deficiency) of revenues				
Over (under) expenditures	-	(6,250)	286,876	293,126
Net change in fund balance	\$ -	\$ (6,250)	\$ 286,876	\$ 293,126
FUND BALANCE, BEGINNING (OCT 1, 2021)	1,651,623	1,651,623	1,651,623	
FUND BALANCE, ENDING	\$ 1,651,623	\$ 1,645,373	\$ 1,938,499	

City of Westlake

Supporting Schedules

June 30, 2022

Cash and Investment Report

June 30, 2022

GENERAL FUND

<u>Account Name</u>	<u>Bank Name</u>	<u>Investment Type</u>	<u>Yield</u>	<u>Balance</u>
Checking Account - Operating	BankUnited	Checking Account	n/a	\$1,985,100
Money Market	BankUnited	MMA	0.33%	\$2,024,242
		Subtotal		\$4,009,342

SPECIAL REVENUE FUND

Money Market	BankUnited	MMA	0.33%	\$2,697,959
		Subtotal		\$2,697,959
		Total		\$6,707,301

File Attachments for Item:

A. FIRST READING: Ordinance 2022-08 – Non-Conforming Lots, Uses, and Structures.

Submitted By: Planning & Zoning

ORDINANCE NO. 2022-08

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING SECTION _____ ENTITLED “NON-CONFORMING LOTS, USES, AND STRUCTURES”; PROVIDING FOR REGULATIONS FOR LOTS, USES, AND STRUCTURES LAWFULLY EXISTING AT THE TIME OF AN AMENDMENT TO THE CITY’S CODE OF ORDINANCES AND THEREAFTER DEEMED NON-CONFORMING; PROVIDING FOR CODIFICATION; PROVIDING FOR A CONFLICTS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



Meeting Agenda Item Coversheet

MEETING DATE:		August 2, 2022	Submitted By: Planning & Zoning	
SUBJECT: <i>This will be the name of the Item as it will appear on the Agenda</i>		FIRST READING: Ordinance 2022-08 – Non-Conforming Lots, Uses, and Structures.		
STAFF RECOMMENDATION: (MOTION READY)		Motion to approve First Reading of Ordinance 2022-08 “Non-Conforming Lots, Uses, and Structures”		
SUMMARY and/or JUSTIFICATION:		This Ordinance establishes provisions for regulations for lots, uses, and structures lawfully existing at the time of an amendment to the city’s code of ordinances and thereafter deemed non-conforming.		
SELECT, if applicable	AGREEMENT:		BUDGET:	
	STAFF REPORT:		PROCLAMATION:	
	EXHIBIT(S):	X	OTHER:	
IDENTIFY EACH ATTACHMENT. <i>For example, an agreement may have 2 exhibits, identify the agreement and Exhibit A and Exhibit B</i>		Exhibit A: Ordinance 2022-08: Non-Conforming Lots, Uses, and Structures.		
SELECT, if applicable		RESOLUTION:		ORDINANCE: X
IDENTIFY FULL RESOLUTION OR ORDINANCE TITLE <i>(if Item is <u>not</u> a Resolution or Ordinance, please erase all default text from this field’s textbox and leave blank)</i> <u>Please keep text indented.</u>		<p style="text-align: center;">ORDINANCE NO. 2022-08</p> <p>AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING SECTION _____ ENTITLED “NON-CONFORMING LOTS, USES, AND STRUCTURES”; PROVIDING FOR REGULATIONS FOR LOTS, USES, AND STRUCTURES LAWFULLY EXISTING AT THE TIME OF AN AMENDMENT TO THE CITY’S CODE OF ORDINANCES AND THEREAFTER DEEMED NON-CONFORMING; PROVIDING FOR CODIFICATION; PROVIDING FOR A CONFLICTS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.</p>		
FISCAL IMPACT (if any):		No Fiscal Impact		\$0

ORDINANCE NO. 2022-08

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING SECTION _____ ENTITLED "NON-CONFORMING LOTS, USES, AND STRUCTURES"; PROVIDING FOR REGULATIONS FOR LOTS, USES, AND STRUCTURES LAWFULLY EXISTING AT THE TIME OF AN AMENDMENT TO THE CITY'S CODE OF ORDINANCES AND THEREAFTER DEEMED NON-CONFORMING; PROVIDING FOR CODIFICATION; PROVIDING FOR A CONFLICTS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Westlake finds the need for additional regulations allowing non-conforming uses for property owners to maximize utilization of their property and to provide for the adequate health, safety, and welfare of the City; and

WHEREAS, the City Council of the City of Westlake deems it in the best interest of the City to amend the Code of Ordinances by creating Section ____ entitled "Non-Conforming Lots, Uses, and Structures" to allow certain lots, uses, and structures to continue to exist in conformance with the provisions herein; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are confirmed, adopted and incorporated herein and made a part hereof by this reference.

SECTION 2. The City Council hereby creates Section _____ of the City's Code of Ordinances as follows:

Non-Conforming Lots, Uses, and Structures.

1. Intent: Currently within the City or by virtue of amendments to this Code of Ordinances that may be later adopted, there may exist:

a. Lots;

b. Structures;

c. Uses of Land and Structures.

Non-Conforming uses are declared by this Ordinance to be incompatible with permitted uses in the zoning districts involved. A Non-conforming use of a structure, a Non-conforming use of land, or a Non-conforming use of a structure and land in combination shall not be extended or enlarged after passage of this Ordinance.

1 2. Non-Conforming Single Family Lots of Record: Any lot or parcel, of record prior to
2 adoption of an amendment to the City's Code of Ordinances, that does not thereafter meet
3 the requirements of the City's Code for lot area or lot width, may nevertheless be utilized
4 for single-family residence purposes only, provided that the lot area and lot width are
5 within two-thirds of that required by the terms of the regulations.

6 3. Non-conforming Structures: Where a lawful structure exists at the effective date of
7 adoption or amendment to the City's Code by reason of restrictions on area, lot coverage,
8 height, yards, its location on the lot, or other requirements concerning the structure, such
9 structure may be continued so long as it remains otherwise lawful, subject to the
10 following provisions:

11 a. No such non-conforming structure may be enlarged or altered in any way which
12 increases its non-conformity, but any structure or portion hereof may be altered
13 to decrease its non-conformity.

14 b. Should such non-conforming structure be destroyed by any means to an extent
15 of more than fifty (50) percent of its replacement cost at the time of destruction,
16 it shall not be reconstructed except in conformity with the provisions of the
17 current City's Code of Ordinances.

18 c. Should any such structure be moved for any reason for any distance whatever,
19 it shall thereafter conform to the regulations for the zoning district in which it is
20 located after it is moved.

21 4. Non-Conforming Use of Structures or of Structures and Premises in Combination: If
22 lawful use involving individual structures, or of structures and premises in combination,
23 exists at the effective date of an amendment to the City's Code of Ordinances, that would
24 not thereafter be allowed in the zoning district under the terms of the City's Code, the
25 non-conforming use may be continued so long as it remain subject to the following
26 provisions:

27 a. No existing structure devoted to a use not permitted in the zoning district in
28 which it is located shall be enlarged, extended, constructed, reconstructed,
29 moved, or structurally altered except in changing the use of the structure to
30 a use permitted in the zoning district in which it is located, except that the City
31 Council shall have the discretion to allow reasonable alterations for the purpose
32 of allowing the non-conforming use to modernize or redesign when it is deemed
33 that such changes are in the interest of the City's health, morals, safety and/or
34 welfare.

35 b. Any structure, or structure and land in combination, in or on which a non-
36 conforming use is superseded by a permitted use, shall thereafter conform to the
37 regulations for the zoning district, and the non-conforming use may not
38 thereafter be resumed.

1 c. When a non-conforming use of a structure, or a structure and premises in
2 combination, is discontinued or abandoned for one hundred eighty (180)
3 calendar days from the time at which the license for said use expires (except
4 when governmental action impedes access to the premises), the structure, or
5 structure and premises in combination, shall not thereafter be used except in
6 conformity with the regulations of the zoning district in which it is located.

7 d. Where non-conforming use status applies to a structure and premises in
8 combination, removal or destruction of the structure shall eliminate the non-
9 conforming status of the land. Destruction for the purpose of this sub-section is
10 defined as damage to an extent of more than fifty (50) percent of the replacement
11 cost at the time of the destruction.

12 e. If a non-conforming structure or portion of a structure containing a non-
13 conforming use becomes physically unsafe or unlawful due to lack of repairs and
14 maintenance, and is declared by any duly authorized official to be unsafe or
15 unlawful by reason of physical condition, it shall not thereafter be restored,
16 repaired, or rebuilt except in conformity with the regulations of the zoning
17 district in which it is located.

18 **SECTION 3. Codification.** It is the intention of the City Council of the City of
19 Westlake that the provisions of this Ordinance shall become and be made a part of the Code
20 of Ordinances of the City of Westlake, Florida, and that the Sections of this Ordinance may
21 be renumbered, re-lettered and the word "Ordinance" may be changed to "Section,"
22 "Article" or such other word or phrase in order to accomplish such intention.

23
24 **SECTION 4. Conflicts.** All ordinances or parts of ordinances, resolutions or
25 parts of resolutions which are in conflict herewith, are hereby repealed to the extent of
26 such conflict.

27
28 **SECTION 5. Severability.** Should the provisions of this ordinance be declared to be
29 severable and if any section, sentence, clause or phrase of this ordinance shall for any
30 reason be held to be invalid or unconstitutional, such decision shall not affect the validity
31 of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall
32 remain in effect, it being the legislative intent that this ordinance shall remain
33 notwithstanding the invalidity of any part.

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SECTION 6. Effective Date. This ordinance shall be effective upon adoption on second reading.

PASSED this ____ day of _____, 2022, on first reading.

PUBLISHED on this ____ day of _____, 2022 in the Palm Beach Post.

PASSED AND ADOPTED this ____ day of _____, 2022, on second reading.

City of Westlake
John Paul O'Connor, Mayor

ATTEST:

Zoie Burgess, City Clerk

APPROVED AS TO LEGAL FORM:

OFFICE OF THE CITY ATTORNEY

File Attachments for Item:

B. FIRST READING: Ordinance 2022-09 – Granting Florida Public Utilities a Non-Exclusive Franchise

Submitted By: Administration

ORDINANCE 2022-09

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF 30 YEARS TO SELL, DISTRIBUTE, TRANSPORT, AND TRANSMIT NATURAL, MANUFACTURED, OR MIXED GAS IN THE CITY OF WESTLAKE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE UPON FINAL PASSAGE



Meeting Agenda Item Coversheet

MEETING DATE:		August 2, 2022	Submitted By: Administration	
SUBJECT: <i>This will be the name of the Item as it will appear on the Agenda</i>		FIRST READING: Ordinance 2022-09 – Granting Florida Public Utilities a Non-Exclusive Franchise		
STAFF RECOMMENDATION: (MOTION READY)		Motion to Approve on First Reading Ordinance 2022-09 - Granting Florida Public Utilities a Non-Exclusive Franchise		
SUMMARY and/or JUSTIFICATION:		<p>At the July 5, 2022, Council meeting, Council approved the Tri-Party Grant Agreement for Florida Public Utilities. To fully approve the Agreement, Council must enact Ordinance 2022-09 granting to Florida Public Utilities a non-exclusive franchise.</p> <p>It is before council for first reading and will be approved upon second reading at the September 6, 2022, Council meeting.</p>		
SELECT, if applicable		AGREEMENT:		BUDGET:
		STAFF REPORT:		PROCLAMATION:
		EXHIBIT(S):		OTHER:
IDENTIFY EACH ATTACHMENT. <i>For example, an agreement may have 2 exhibits, identify the agreement and Exhibit A and Exhibit B</i>		Ordinance 2022-09 Seminole Improvement District Resolution 2022-24 Tri-Party Grant Agreement		
SELECT, if applicable		RESOLUTION:		ORDINANCE:
IDENTIFY FULL RESOLUTION OR ORDINANCE TITLE <i>(if Item is <u>not</u> a Resolution or Ordinance, please erase all default text from this field's textbox and leave blank) <u>Please keep text indented.</u></i>		ORDINANCE 2022-09 AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF 30 YEARS TO SELL, DISTRIBUTE, TRANSPORT, AND TRANSMIT NATURAL, MANUFACTURED, OR MIXED GAS IN THE CITY OF WESTLAKE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE UPON FINAL PASSAGE.		
FISCAL IMPACT (if any):				\$

ORDINANCE NO. 2022-09

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF 30 YEARS TO SELL, DISTRIBUTE, TRANSPORT, AND TRANSMIT NATURAL, MANUFACTURED, OR MIXED GAS IN THE CITY OF WESTLAKE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE UPON FINAL PASSAGE.

WHEREAS, Florida Public Utilities Company (the “Company”) has requested permission from the City of Westlake (“City”) to erect, construct, operate, and maintain a gas system; to import, transport, sell and distribute Gas (as defined herein) within the City; and for these purposes to establish the used or useful facilities and equipment and to lay and maintain gas mains, service pipes, and any other appurtenances, as are used or useful in the sale, transportation and distribution of Gas within the City Limits; and

WHEREAS, the City and the Company acknowledge that the rights-of-way and utility easements within the City are under the jurisdiction of Seminole Improvement District and the Company will obtain permits to construct, operate and occupy a portion of the rights-of-way and utility easements with its jurisdiction as provided in that certain Tri-Party Grant Agreement among the City, the Seminole Improvement District and Florida Public Utilities Related to Permitting of Facilities Per City Franchise Agreement (the “Tri-Party Agreement”), attached hereto as Exhibit “A”; and

WHEREAS, the rights-of-way, property, and utility easements owned by, or dedicated to, Seminole Improvement District to be used by the Company are properties acquired and maintained by the Seminole Improvement District at expense to the property owners within the City Limits, and the right to use Seminole Improvement District’s rights-of-way, property, or utility easements is a property right without which the Company would be required to invest capital and incur property acquisition costs; and

WHEREAS, the City desires to ensure that the rights-of-way, property, and utility easements used by the Company are promptly restored to a safe and secure condition to protect the health, safety, and welfare of the citizens and residents of the City; and

WHEREAS, state statutes and City ordinances authorize the City to grant a franchise for the purposes set forth herein; and

WHEREAS, the City finds that it is in the public interest of its citizens to enter into this Franchise Agreement as defined herein, with the Company.

NOW, THEREFORE, BE IT ENACTED BY CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA:

1. **Definitions.** For the purposes of this Franchise Agreement as defined herein, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.
 - A. “Business Day” means a day other than a Saturday or Sunday or a day which is observed as a Federal holiday.
 - B. “City” shall mean the City of Westlake, Florida, a municipal corporation organized under the laws of the State of Florida.
 - C. “City Clerk” means the Person appointed, hired or otherwise designated or charged by the City to accept, organize, maintain and/or keep records of the City.
 - D. “City Engineer” means the Person appointed, hired or otherwise designated or charged by the City to perform professional and technical engineering duties for the City which may include, by example, performing supervisory and administrative duties in planning and coordinating the operation of engineering services on behalf of the City.
 - E. “City Limits” shall mean the incorporated limits of the City, including any such territory as may be hereafter added or annexed to, or consolidated with, the City.
 - F. “City Manager” means the Person appointed, hired or otherwise designated or charged by the City to implement municipal policy and/or otherwise serve as the administrator for the City in connection with day-to-day functions, or, in the absence of such individual, the local governing body.
 - G. “Commission” shall mean the Florida Public Service Commission.
 - H. “Company” shall mean Florida Public Utilities Company, a Florida corporation, its successors, and assigns.
 - I. “Customer” shall mean any Person supplied with Gas service by the Company within the City Limits.
 - J. “Distribution System” shall mean any and all transmission pipe lines, main pipe lines, and service pipe lines, together with all necessary and desirable appurtenances, including, but not limited to, all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures, as are used or useful in the sale, importation, distribution, transportation, and transmission of Gas within the City Limits.

- K. “Effective Date” shall mean the date this Franchise Agreement becomes effective as described in Section 3 below.
- L. “Expenses” means court costs, including taxed and untaxed costs, and reasonable attorneys’ fees, whether suit be brought or not, and includes, without limitation, expenses incurred in any appellate or bankruptcy proceeding (including reasonable legal and investigative expenses).
- M. “Franchise” or “Franchise Agreement” shall mean this ordinance as adopted by the City and accepted by the Company.
- N. “Franchise Fee” shall mean an amount equal to six percent (6%) of the Company’s Gross Revenues less Permit Fees paid by the Company to the City or SID.
- O. “Gas” shall mean natural gas and/or manufactured gas and/or a mixture of gases, including renewable natural gas and hydrogen gas, that are distributed in pipes and measured by meter on the Customer’s premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as “bottled gas”).
- P. “Gross Revenues” shall mean all revenues received by the Company from any Customer, excluding deposits, prepayments, turn on/off charges, meter installation charges, and any other revenue not generated directly and solely from the sale, distribution, transportation, and transmission of Gas. Gross Revenues shall also exclude revenues from those Customers designated by Company as “interruptible,” “industrial,” and “other”, until and unless a franchise or utility tax is imposed on such Customers by City, either independently or collectively, of all other competing utility services in the City Limits, including, without limitation, the imposition of franchise or utility taxes on all grades of fuel oils or gases used for such Customers at a relatively equal basis on the Franchise Fee plus utility taxes as levied on Gas pursuant to statute and/or rule.
- Q. “Permit Fees” means fees payable by Company in connection with permit applications, reviews and inspections for development and construction of the Distribution System, including connections to homes and other improvements.
- R. “Person” shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- S. “Rights-of-way” shall mean all rights-of-way, streets, alleys, highways, waterways, bridges, sidewalks, easements and other ways or places of whatever nature, publicly held or dedicated for public use and presently opened or to be opened to public use for vehicular or pedestrian movement, to include the space at, or below the right-of-way places located within the

City Limits, provided such area is suitable for utilization for the Gas Distribution system.

- T. “Seminole Improvement District”, “District,” and “SID” shall mean the independent improvement district created and existing pursuant to Chapter 2000-431, Laws of Florida which geographical boundaries that are co-terminus with the City’s boundaries.
- U. “SID Engineer” means the Person appointed, hired or otherwise designated or charged by SID to perform professional and technical engineering duties for SID which may include, by example, performing supervisory and administrative duties in planning and coordinating the operation of engineering services on behalf of SID.
- V. “SID Manager” means the Person appointed, hired or otherwise designated or charged by SID to implement district policy and/or otherwise serve as the administrator for the district in connection with day-to-day functions, or, in the absence of such individual, the district’s governing body.
- W. “Utility Easement” means those private, non-exclusive easements held by the Seminole Improvement District over which the District holds the power to grant utility providers the ability to use its easements in the District’s sole discretion.

2. **Grant of Authority.** City hereby grants to the Company the non-exclusive franchise for the provision of natural gas service within the City Limits.
3. **Term.** This Franchise Agreement shall take effect and be in force from and after the first day of the month following the final passage of this Franchise Agreement, as required by applicable law, and upon filing of the acceptance by the Company with the City Clerk (the “Effective Date”). Except as provided in Section 4 herein, the Franchise hereby granted by the City to the Company shall be thirty (30) years from the Effective Date (the “Initial Term”). Unless either party provides notice in writing in compliance with Section 19 hereof to the other party at least thirty (30) days prior to the expiration of the Initial Term, upon expiration of the Initial Term, this Franchise Agreement shall continue on the same terms then in effect at the expiration of the Initial Term on a month-to-month basis.
4. **Termination by the City.** In the event that the Company commits a material breach of any of the material covenants, terms, and conditions of this Franchise Agreement, the City may terminate this Franchise Agreement; if the City shall have served the Company with a written notice pursuant to Section 19 herein, setting forth in reasonable detail all matters pertinent to such material violation or default, and the Company shall have failed within sixty (60) days after service of such notice or such longer period of time as may be reasonably necessary to present a plan to the City to effect such cure pursuant to such plan within a reasonable period of time after the City’s approval of

the plan. Approval of the plan by the City shall not be unreasonably withheld, conditioned or delayed.

5. **Non-exclusive Franchise.** The City reserves the right to grant a similar Franchise to any other Person at any time during the period of this Franchise, so long as such grant shall not interfere with the Company's rights granted hereunder. This Franchise shall grant the privilege of carrying on the business in all of the City or in part of the City, and, except as provided in Section 6 below, with no promise that there will be no competition. In the event the City grants a franchise to the competitor of the Company, the grant shall not interfere with the Company's rights granted hereunder except as to matters that occur as a result of competition.
6. **Competition.** As further consideration of this Franchise Agreement, the City hereby agrees that during the term of this Franchise it shall not engage in the business of selling, importing, distributing, transporting, or transmitting Gas or otherwise compete with the Company within the City Limits.
7. **Assignment.** This Franchise hereby granted shall not be sold, leased, assigned or otherwise alienated or disposed of (each a "Transfer"; provided, however, in no event shall any transfer by operation of law be considered a "Transfer" under this Franchise, including, without limitation, by way of the merger of the Company with or into any other Person) except with the prior written consent of the City Manager, which shall not be unreasonably withheld or conditioned or unduly delayed (the "Consent"). In the event that the City neither grants nor denies the Consent forty-five (45) days after the Company's written request for Consent delivered pursuant to Section 19 below, then the Consent shall be deemed to have been granted by the City to the Company. No Transfer shall be effective until the Person to whom the Franchise is Transferred files a duly executed instrument reciting the fact of the Transfer, accepting the terms of the Franchise, and agreeing to perform all the conditions thereof in the office of the City Clerk whereupon the transferor shall be released of any further obligations under this Franchise Agreement without the necessity of any further action by any Person. Notwithstanding the foregoing, the Company may in its sole and absolute discretion, without consent, Transfer the Franchise in connection with: (i) the lease or sale of all or substantially all of the Distribution System, whether to a subsidiary or affiliate or unrelated Person; or (ii) the pledge or mortgage of this Franchise in connection with the physical property owned and used by the Company in the construction, maintenance, and operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.
8. **Compliance with Applicable Laws.** To the extent consistent with Florida law, the Company shall be subject to all lawful exercises of the City's police power and shall abide by all such reasonable rules, regulations, and ordinances which the City has passed or might pass in the future, which shall not conflict or be inconsistent with the Promulgated Safety Rules and Regulations of the Commission and the Federal and/or Florida Departments of Transportation. Notwithstanding the foregoing, the City shall not pass any ordinance, regulation, rule or take any other similar action or exercise its

police power or take any other action that results in a material change in or materially affects the rights or obligations of the Company under this Franchise Agreement.

- A. In the event the Company or any aspect of the Gas trade, as contemplated hereunder, is deregulated, the Company shall maintain and operate its Distribution System and render efficient service in accordance with the rules and regulations as are, or may be, promulgated by the City.
- B. In the event the City has not promulgated rules and regulations at the time of deregulation, then, the Company shall maintain and operate its Distribution System in compliance with the rules and regulations by which they were governed prior to deregulation until such time as the City has had an opportunity to promulgate rules and regulations or pass an ordinance governing those items regulated by the Commission, governing service standards, safety standards, and quality controls.
- C. In the event of deregulation, the City shall not regulate rates for the sale, distribution, transportation, or transmission of Gas.

9. **Distribution System.** The Distribution System shall be erected, placed, laid, and maintained in a manner consistent with the following:

- A. The Parties agree that SID shall have the authority to permit and supervise the construction, location, restoration, relocation and installation of the Distribution System, as determined by the Tri-Party Agreement.
- B. The Company shall at all times maintain reasonable egress from and ingress to abutting properties where any construction is occurring.
- C. While allowing the functioning of the Distribution System, the Distribution System shall be located in the Seminole Improvement District's Rights-of-way, property, or Utility Easements, by permit, so as not to unreasonably obstruct, disturb or interfere, on a permanent basis, with any traffic, water flow, water pipes, sewers, drains, catch basins, pavement, sidewalk, driveways, or any other structures installed or any other function of said structures of the delivery of municipal services by the Seminole Improvement District or the City.
- D. In the event drain, sewer, catch basins, water pipes, pavements or other like improvements or the function of said improvements are materially damaged solely by the Company by erecting, placing, laying or maintaining the Distribution System, the Company shall repair the damage at its sole cost and expense to substantially the condition that existed prior to said damage. In this regard, SID shall give written notice to the Company pursuant to Section 19 herein, of deficiencies that need to be cured by the Company. Said notice shall set forth a reasonable period of time, under the circumstances, in which the Company shall affect such repair.

- E. Applications for construction permits for all portions of the Distribution System shall be given to the SID Engineer or his designee accompanied by plan drawings showing the proposed work. District shall be responsible for the permit review, approval, and inspections during construction. As soon as practical, but no more than twenty (20) Business Days after completion of the work, the Company shall submit as-built drawings to the SID Engineer or his designee, which shall complete the notice and approval requirement for said work.
- F. In the event at any time during the period of this Franchise the Seminole Improvement District or City shall lawfully elect to alter, or change the grade of the Rights-of-way, property, or Utility Easement area the Company, upon reasonable notice from the SID or the City, shall remove, relay, and relocate any portion of the Distribution System as is necessary at the Company's own cost and expense.

10. Right to Inspect. During the term of this Franchise Agreement, the City or SID, through its designated agent, shall have the authority to inspect the Distribution System at a reasonable time and upon reasonable prior notice to insure compliance with governing law and the Commission's regulations at the City or SID's own cost and expense. Notwithstanding the above, the Company shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any affiliate.

11. Franchise Fee. The Company shall pay the Franchise Fee to the City quarterly on January 1, April 1, July 1, and October 1 of each year during the term of this Franchise unless otherwise agreed. In the event that the Franchise Fee is more than twenty (20) days delinquent, the delinquent amount shall accrue interest at the highest rate allowable by law. In the event the Company makes any Franchise Fee payment in excess of the Franchise Fee due and owing to the City under this Franchise Agreement or if the City is otherwise indebted to the Company, the Company shall have the right to offset such overpayment and/or indebtedness against future payments of the Franchise Fee.

12. Other Fees and Taxes. Except as otherwise provided for herein, the Company shall pay to the City all legally authorized fees, taxes, assessments, and costs levied, imposed or validly adopted by the City during the term of this Franchise Agreement, which shall include, but are not limited to public service taxes, ad valorem taxes (intangible, personal, real), occupational taxes, and licensing fees, other than Permit Fees, which shall be payable to SID in accordance with the Tri-Party Agreement.

13. Franchise Parity. If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other Persons who sell, import, distribute, transport, and transmit Gas (the "Alternate Gas Providers") the right, privilege or franchise to erect, construct, operate, and maintain a Distribution System for the purpose of selling, importing, distributing, transporting, and transmitting Gas to Persons in the City Limits or receiving such Gas from Persons other than the Company

within the City Limits, and imposes a franchise compensation obligation or equivalent on such Alternate Gas Provider for any Person that is less than the Franchise Fee imposed with respect to the same Customer under this Franchise Agreement, the Franchise Fee under this Franchise Agreement shall be automatically reduced so that the Franchise Fee is no greater than the franchise compensation obligation or equivalent when compared on a dollars-per-term basis. In the event that the City does not impose a franchise compensation obligation or equivalent on said Alternate Gas Providers, the Company's obligation to pay the Franchise Fee under this Franchise Agreement shall terminate.

14. Reciprocal Indemnification.

- A. The Company shall indemnify and save the City, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and Expenses, which may be brought against or suffered, sustained, paid or incurred by the City, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:
 - i. any breach by the Company of any of the provisions of this Franchise Agreement; or
 - ii. the gross negligence or willful misconduct of the Company, or any of its servants, agents, employees, licensees, contractors or invitees in carrying on its business within the City Limits.

- B. The City shall indemnify and save the Company, its servants, agents, directors, employees, stockholders, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and Expenses, which may be brought against or suffered, sustained, paid or incurred by the Company, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:
 - i. any breach by the City of any of the provisions of this Franchise Agreement; or
 - ii. the gross negligence or willful misconduct of the City, or any of its servants, agents, employees, licensees, contractors or invitees, in carrying on the business of the City.

- C. Notwithstanding anything to the contrary herein contained, in no event shall the City or the Company be liable under this Franchise Agreement, in any way, for any reason, for any indirect, special or consequential damages (including damages for pure economic loss, loss of profits, loss of earnings or loss of contract), howsoever caused or contributed to.

- D. Indemnification is conditioned upon the indemnified party providing notice to the indemnifying pursuant to Section 19 herein, within thirty (30) days after the indemnified party knew of the claim.
- E. Nothing herein is intended to act as a waiver of the City's rights, privileges, and immunities under the doctrine of sovereign immunity and/or limits of liability set forth in Section 768.28 of the Florida Statutes.
- F. The provisions of this Section 14 shall survive this Franchise Agreement for a period of one year.

15. Records. The Company shall maintain accounts and records in a manner consistent with Section 368.108 of the Florida Statutes and Chapter 25-7 of the Florida Administrative Code and that the Gross Revenues within the City Limits are able to be calculated. Upon a good faith request, the Company shall provide to the City any accounts and records relevant to this Franchise Agreement pursuant to a duly executed confidentiality agreement within a commercially reasonable amount of time after said request.

16. Governing Law; Venue; JURY WAIVER. This Franchise Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Florida, without regard to the conflict of laws principles thereof. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts in the State of Florida (state or federal), with venue in the county in which the City is located, over any dispute arising out of this Franchise Agreement and agree that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may have to the venue of such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER CAREFUL CONSIDERATION AND AN OPPORTUNITY TO SEEK LEGAL ADVICE, WAIVE THEIR RIGHT TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY OF THE PROVISIONS OF OR MATTERS RELATED TO THIS FRANCHISE.

17. Entire Agreement. This Franchise Agreement, and the schedules and exhibits hereto, contain the entire understanding and agreement of the parties hereto relating to the subject matter of this Franchise Agreement and all prior agreements relative hereto which are not contained herein.

18. Attorneys' Fees and Expenses. In the event either party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the substantially non-prevailing party its Expenses. All such Expenses shall bear interest at the highest rate allowable under the laws of the State of Florida from the date the substantially prevailing party pays such Expenses until the date the substantially non-prevailing party repays such Expenses. Expenses incurred in enforcing this Section shall be covered by this Section. For this purpose, the court is requested by the parties to award

actual costs and attorneys' fees incurred by the substantially prevailing party, it being the intention of the parties that the substantially prevailing party be completely reimbursed for all such costs and fees. The parties request that inquiry by the court as to the fees and costs shall be limited to a review of whether the fees charged and hourly rates for such fees are consistent with the fees and hourly rates routinely charged by the attorneys for the substantially prevailing party.

19. Notices. Whenever any notice, demand or request is required or permitted under this Franchise, such notice, demand or request shall be in writing and shall be deemed given when (a) delivered personally to the intended party, (b) sent by facsimile transmission (with automatic electronic "answerback" confirmation of successful transmission) to that party at the facsimile number for that party set forth below, (c) sent by electronic mail submission with a written confirmation from the receiving party confirming receipt of the electronic mail submission, (d) on the fifth (5th) Business Day after being mailed by certified mail (postage prepaid and return receipt requested) to that party at the address for that party set forth below, or (e) on the day delivered by Federal Express or any similar express delivery service for delivery to that party at that address. All notices shall be addressed as follows:

If to Company: Florida Public Utilities Company
1635 Meathe Drive
West Palm Beach, Florida 33411
Attention: Director, Natural Gas Operations
Facsimile: _____
Email: _____

with a copy to: Baker & Hostetler LLP
200 S. Orange Avenue, Suite 2300
Orlando, Florida 32801
Attention: Jeffrey E. Decker
Facsimile: (407) 841-0168
Email: jdecker@bakerlaw.com

with a copy to: Chesapeake Utilities Corporation
Office of the General Counsel
500 Energy Lane, Suite 400
Dover, DE 19901
Attention: James F. Moriarty
Facsimile: (302) 734-6750
Email: jmoriarty@chpk.com

If to City: City of Westlake
4001 Seminole Pratt Whitney Road
Westlake, FL 33470
Attention: Kenneth G. Cassel, City Manager
Facsimile: (561)790-5466
Email: _____

with a copy to:

City of Westlake
4001 Seminole Pratt Whitney Road
Westlake, FL 33470
Attention: City Attorney
Facsimile: (561)790-5466
Email: _____

Notices and communications delivered to persons designated to receive copies shall not be effective notice. Any party may change its facsimile number or address for notices under this Franchise at any time by giving the other Parties at least ten (10) days' prior written notice of such change delivered in conformity with this Section 19.

- 20. Force Majeure.** Any prevention, delay or stoppage of work or other obligations to be performed by either party that are due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes, acts of nature, pandemics, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty or other causes beyond the reasonable control of the party shall excuse performance and other obligations by the party for a period equal to the duration of that prevention, delay or stoppage. In no event shall any material default by Company due to any of the foregoing constitute a grounds for termination of this Franchise.
- 21. Non-waiver.** The failure of any party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Agreement shall not be construed as a waiver or relinquishment for future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by both parties.
- 22. Severability.** If any provision of this Franchise Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Franchise Agreement or the application of such provision to such Person or circumstances, other than as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and shall be enforced to the fullest extent permitted by law.
- 23. Scrivener's Error.** Sections of this Franchise Agreement may be renumbered or relettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or his designee, without need for a public hearing by filing a corrected or recodified copy of same with the City Clerk.
- 24. Ordinances Repealed.** All ordinances and parts of ordinances in conflict or inconsistent with the provisions of this Franchise Agreement are hereby repealed as of the Effective Date.

INTRODUCED on first reading this ____ day of _____, 2022.

PUBLISHED on this ____ day of _____, 2021 in the Palm Beach Post.

PASSED on second reading this ____ day of _____, 2022.

CITY OF WESTLAKE FLORIDA

JOHN PAUL O'CONNOR, MAYOR

ATTEST:

ZOIE BURGESS, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

UNCONDITIONAL ACCEPTANCE BY THE COMPANY

I, the undersigned official of Florida Public Utilities Company (the "Company"), am authorized to bind the Company and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. _____), which are hereby accepted by the Company this _____ day of _____, 2022.

Florida Public Utilities Company

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2022.
Notary Public in and for the State of Florida
My commission expires _____

Received on behalf of the City this _____ day of _____, 2022.

Name: _____ Title: _____

**TRI-PARTY GRANT AGREEMENT AMONG CITY OF WESTLAKE, THE
SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES
COMPANY RELATED TO PERMITTING OF FACILITIES PER CITY FRANCHISE
AGREEMENT**

This a Tri-Party Grant Agreement (“Agreement”) made and entered into by City of Westlake, a municipal corporation (“City”), The Seminole Improvement District, an independent special district created by Special Act of the Florida Legislature (“SID”), and Florida Public Utilities Company, a Florida corporation (the “Company”). City, SID, and the Company are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, the Company has requested permission from the City to erect, construct, operate, and maintain a Gas Distribution system and to import, transport, sell and distribute Gas within the City; and for these purposes to establish the used or useful facilities and equipment and to lay and maintain gas mains, service pipes, and any other appurtenances, as are used or useful in the sale, transportation and distribution of Gas within the City limits; and

WHEREAS, the City and the Company acknowledge that the Rights-of-way and utility easements within the City are held by and under the jurisdiction of SID and the Company will obtain permits from SID to construct, operate and occupy a portion of the utility easement with its facilities; and

WHEREAS, the utility easements owned by SID to be used by the Company are properties acquired and maintained by SID at expense to the property owners within the City limits, and the right to use SID’s utility easements is a property right without which the Company would be required to invest capital and incur property acquisition costs; and

WHEREAS, the City has enacted Ordinance No. 2022 - ____ granting to the Company and its successors and assigns, a non-exclusive franchise for a period of thirty (30) years to sell, distribute, transport, and transmit natural, manufactured or mixed gas in the City (the “Franchise Agreement), attached hereto as Exhibit “A”; and

WHEREAS, the Franchise Agreement provides, among other things, that the Company shall (i) obtain all required permits, approvals, licenses or consents in accordance with this Agreement prior to constructing or operating any facilities within the City; (ii) pay to SID any applicable fees in connection with the permit applications, reviews and inspections for development, and (iii) pay to the City all legally authorized fees, taxes, assessments, and costs levied, imposed or validly adopted by the City during the term of the Franchise Agreement, which shall include, but are not limited to public service taxes, ad valorem taxes (intangible, personal, real), occupational taxes, and licensing fees; and

WHEREAS, in February 2018, SID and the City entered into that certain Interlocal Agreement Regarding the Provision of Certain Services, Infrastructure, and Public Facilities in the City of Westlake and for Assurance of Non-Duplication of Services (“Interlocal Agreement”); and

WHEREAS, pursuant to Section 16(c)(vi) of the Interlocal Agreement, the City and SID agreed that consultation is required prior to any undertakings by City or SID for tangible or physical infrastructure including gas lines; and

WHEREAS the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local government to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as building permitting and inspection services; and

WHEREAS, the Parties desire to (i) acknowledge the Franchise Agreement granted to the Company, (ii) reflect the grant by SID to the Company of the right and privilege, to erect, construct, operate, and maintain a Distribution System in, on or under any Rights-of-ways within the City Limits, (iii) confirm SID and the City have engaged in the necessary consultation under the Interlocal Agreement, and (iv) establish the process by which the City and SID will coordinate the review and processing of permits applied for by the Company for the use of the Rights-of-way as contemplated in the Franchise Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree a unified approach to building permitting and inspection services for the Distribution System will result in a more efficient and cost effective method of service delivery, ultimately enhancing economic development and promoting the safety and welfare of all of the citizens of the City as follows:

1. Capitalized Terms; Recitals. All capitalized terms not defined herein shall be given the meanings ascribed thereto in the Franchise Agreement. The Recitals set forth above are true and correct and form a material part of this Agreement.

2. Grant of Rights. SID hereby grants the non-exclusive right, privilege, and easement to erect, construct, operate, and maintain a Distribution System in, on or under any Rights-of-way, utility easements, or property owned by SID as they now exist or maybe hereafter dedicated, purchased, constructed, opened, laid out or extended by SID within the City Limits. In the event the Rights-of-way are closed, vacated or otherwise abandoned, SID or the City under the Franchise Agreement, as applicable, shall provide the Company with an easement for the Distribution System in such form and content as is reasonably acceptable to the Company to the extent possible. This grant of right, privilege and easement does not relieve the Company from its obligation to obtain all necessary permits from SID or the City as further described herein.

3. Service Delivery Agreement.

a. SID shall serve as the single, unified point of service for permitting and inspections services for development by the Company of the Distribution System pursuant to the Franchise Agreement within the Rights-of-way located in the City Limits. This Agreement shall provide for the staffing and resources for all permit application processing, permit plan review, inspections, and permit compliance. The SID Engineer shall serve as the District Official with control over the use of the Rights-of-way and the development of the Distribution System. The construction permit processing, review, inspection services, and permit compliance shall be

provided consistent with State law, this Agreement and the Franchise Agreement. Building code enforcement to the extent applicable shall be enforced per City code.

b. SID shall be responsible for funding of the staff and operational costs of the services of this Agreement. The Company shall be responsible for paying, without duplication, a maximum of SID's regular published fees per development charged generally to applicants related to permit applications, reviews, and inspections for development and construction, currently set at \$2,500.

c. Other than as set forth above, no separate fees shall be due or payable to SID, the City or any department or agency thereof in connection with the application, permitting, and inspection process associated with the development and construction of the Distribution System.

d. SID and City agree to prepare and adopt unified operational procedures for construction permit processing, review, and inspections to assure a high level of service to customers without undue delay. Any such procedures shall require only one (1) application; one (1) set of permit drawings, and one (1) fee payable to SID. SID will coordinate any and all reviews that the City may require relative to the approval for construction of the Distribution System that may be the subject of a permit application.

4. Term. The term of this Agreement shall commence on the effective date of the Franchise Agreement (the "Effective Date") and shall terminate on the earlier of the date that (a) the Franchise Agreement terminates or expires, (b) SID cedes jurisdiction over the Rights-of-way, real property, and utility easements within the City to the City, and (c) such other date as the Parties agree in writing (the "Term").

5. Dispute Resolution.

a. The Parties agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Any Party may initiate the dispute resolution process by providing written notice to the other Party(ies). Initiation of the dispute resolution process shall operate as a stay of the action which is the subject of the dispute.

b. Notwithstanding the foregoing, in the event that any Party determines, in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon the filing and any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.

c. Within ten (10) days of the abatement order, the allegedly aggrieved Party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all other Parties involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and

place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict. If discussions between the Parties at this meeting fail to resolve the dispute, the following Parties agree to pursue formal conflict resolution per the following provisions:

i. For a conflict between the Company, on the one hand, and the City and/or SID, on the other hand, within forty (40) days of the receipt of the notice described in subparagraph a. above, the Parties shall conduct a mediation in the presence of a neutral third party Florida Supreme Court certified mediator. If the Parties are unable to agree upon a mediator, the City or, if the City is not a Party to the Dispute, SID shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Palm Beach, Florida. The mediation contemplated by this Section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. Costs of mediation shall be shared equally among the parties participating in mediation. Any Party to the mediation may terminate the mediation at any time. If the Parties are unable to reach a mediated settlement of the conflict within fifty (50) days of the receipt of the notice described in subparagraph a. above, the Parties in conflict may pursue any and all rights and remedies to which the Parties may be entitled with respect thereto.

ii. For a conflict solely between the City and SID, the conflict resolution provisions of the Interlocal Agreement shall apply.

d. Any of the time requirements set forth in this dispute resolution provision of the Agreement may be extended to a date certain by mutual agreement, in writing, of the primary conflicting Parties. To the extent such agreement to extend time would cause any jurisdictional time requirements to run with regard to a particular claim, the agreement to extend shall have the effect of extending any jurisdictional time requirements with regard to that claim.

6. Hold Harmless; Sovereign Immunity. To the extent permitted by law, each Party agrees to hold the others harmless from any and all claims, actions or suits which might arise out of its own neglect or default of the Agreement. The foregoing is not intended, and shall not be construed, as a waiver by any Party of the benefits of Section 768.28, Florida Statutes.

7. Force Majeure. No Party shall be liable or responsible to any other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to another Party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, warlike operation, insurrection, rebellion, revolution, military or usurped power, sabotage or other civil unrest; (d) strikes, embargoes, blockades, labor stoppages, lockouts or slowdowns or other industrial disturbances or inability to obtain necessary materials or services (e) governmental delay regarding permits or approvals; (f) action by any governmental authority; (g) national or regional emergency; (h) shortage of adequate power or transportation facilities; or (j) other similar events beyond the reasonable control of the Party impacted by the Force Majeure

Event (the "Impacted Party") and provided further, however, that such performance shall be resumed and completed with due diligence and reasonable dispatch as soon as the contingency causing the delay or impossibility shall abate.

8. Notice. Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be in writing and shall be deemed given when (a) delivered personally to the intended Party, (b) sent by facsimile transmission (with electronic "answerback" confirmation of successful transmission) to that Party at the facsimile number for that Party set forth below, (c) sent by electronic mail submission with a written confirmation from the receiving Party confirming receipt of the electronic mail submission, (d) on the fifth (5th) Business Day after being mailed by certified mail (postage prepaid and return receipt requested) to that Party at the address for that Party set forth below, or (e) on the day delivered by Federal Express or any similar express delivery service for delivery to that Party at that address. All notices shall be addressed as follows:

If to Company: Florida Public Utilities Company
1635 Meathe Drive
West Palm Beach, Florida 33411
Attention: Director, Natural Gas Operations
Facsimile: _____
Email: _____

with a copy to: Baker & Hostetler LLP
200 S. Orange Avenue, Suite 2300
Orlando, Florida 32801
Attention: Jeffrey E. Decker
Facsimile: (407) 841-0168
Email: jdecker@bakerlaw.com

with a copy to: Chesapeake Utilities Corporation
Office of the General Counsel
500 Energy Lane, Suite 400
Dover, DE 19901
Attention: James F. Moriarty
Facsimile: (302) 734-6750
Email: jmoriarty@chpk.com

If to City: City of Westlake
4001 Seminole Pratt Whitney Road
Westlake, FL 33470
Attention: Kenneth G. Cassel, City Manager
Facsimile: (561) 790-5466
Email: ken.cassel@inframark.com

with a copy to: City of Westlake
4001 Seminole Pratt Whitney Road
Westlake, FL 33470
Attention: City Attorney
Facsimile: (561) 790-5466
Email: _____

For SID: Seminole Improvement District
4001 Seminole Pratt Whitney Road
Westlake, FL 33470
Attention: Kenneth G. Cassel, District Manager
Facsimile: (561) 790-5466
Email: ken.cassel@inframark.com

with a copy to: Lewis, Longman, and Walker, P.A.
360 S. Rosemary Avenue, Suite 1100
West Palm Beach, FL 33401
Attention: Robert Diffenderfer, District Attorney
Facsimile: (561) 640-8202
Email: rdiffenderfer@llw-law.com

Notices and communications delivered to persons designated to receive copies shall not be effective notice. Any Party may change its facsimile number or address for notices under this Agreement at any time by giving the other Parties at least ten (10) days' prior written notice of such change delivered in conformity with this Section 8.

9. Entire Agreement; Modification. This Agreement contains the entire agreement of the Parties and may not be changed except by written agreement duly executed by the Parties hereto. This Agreement supersedes any prior understandings or agreements between the Parties, and there are no representations, warranties, or oral agreements other than those expressly set forth herein.

10. Assignment and Subcontracting. No assignment, delegation, or transfer of this Agreement, or part hereof, shall be made, unless approved in writing by the Parties.

11. Jointly Drafted. The Parties agree that this Agreement is entered into knowingly and voluntarily. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft this Agreement, the Parties agree that this Agreement shall be construed as if the Parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of any other.

12. Parties Acknowledgement; Parties Bound. The Parties acknowledge that they have read this Agreement, and that they understand the terms and conditions herein and that the terms have been fully and completely explained to the Parties prior to the execution thereof. Each Party acknowledges that each other Party has made no warranties, representations, covenants, or agreements, express or implied, except as expressly contained in this Agreement. Further, the Parties have caused this Agreement to be executed on their respective behalf by the authorized

officer whose signature appears below under their respective name, to be effective as of the date first written above. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, and assigns.

13. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such claim or lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS ANY OF THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY ANOTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTIES IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

Prior to the filing of any litigation relating to this Agreement, the Parties will follow the dispute resolution provisions set forth in Section 4 hereof, with each Party to bear its own attorneys' fees and costs; however, each Party to the dispute shall pay equally its share of the mediator's fees and, if applicable, any pre-approved cost(s) incurred by the mediator.

The Parties further agree that entry into this Agreement constitutes irrevocable consent and agreement that the exclusive venue and jurisdiction for any such dispute (including any dispute that is based on only a tenuous nexus to this Agreement) shall lie solely in the state or county courts in and for Palm Beach County, Florida. The Parties expressly and irrevocably waive any and all right(s), to the removal of any such dispute to any federal court. Process in any action or proceeding referred to in this paragraph may be served on any Party anywhere in the world, such Party waives any argument that said Party is not subject to the jurisdiction of the state courts located in Palm Beach County, Florida and the laws of the State of Florida.

14. Attorneys' Fees; and Costs of Enforcement. Each Party shall at the conclusion of the resolution of any and all disputes arising from or based on this Agreement, pay all of its own costs and attorneys' fees incurred in the prosecution or defense of said dispute. Each Party shall pay its own costs and attorneys' fees without regard to which Party prevailed in the resolution of any dispute arising from or based on this provisions of this Agreement.

15. Cooperation; Supplementary Actions. All Parties agree to cooperate fully and to execute any supplementary documents, and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.

16. Miscellaneous. Whenever the context shall so require, all words in this Agreement of one gender shall be deemed to include all other genders.

17. Public Records. SID and City are public entities. Each Party is responsible for complying with its public records requests and the public records laws in Chapter 119, Florida Statutes, including Section 119.0701.

18. Independent Contractor. SID, the Company, and City are independent contractors. Each of the Parties and its agents shall not act as officers, employees, or agents of the other Parties. None of the Parties shall have the right to bind any of the other Parties to any obligation not expressly undertaken by the other Parties.

19. Third Party Beneficiaries. The Parties acknowledge that there are no third party beneficiaries to this Agreement.

20. Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.

21. Interpretation. The headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter,” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

22. Representation of Authority. Each individual executing this Agreement on behalf of a Party hereto represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

23. Waiver. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

24. Time is of the Essence. Time shall be of the essence of this Agreement.

25. Severability. Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

26. Counterparts. This Agreement may be executed in a number of identical counterparts and a facsimile or electronic/digital copy shall be treated as an original. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts

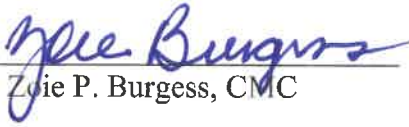
shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

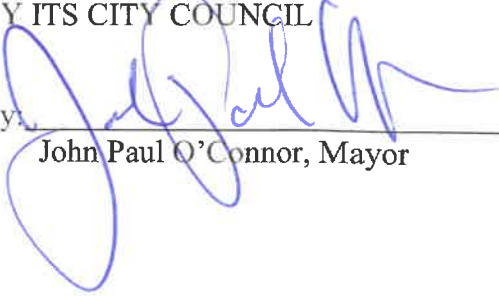
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IN WITNESS WHEREOF, THE CITY OF WESTLAKE, THE SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES COMPANY HAVE EXECUTED OR HAVE CAUSED THIS TRI-PARTY GRANT AGREEMENT TO BE DULY EXECUTED.

ATTEST:

CITY OF WESTLAKE, FLORIDA
BY ITS CITY COUNCIL

By: 
Clerk, Zoie P. Burgess, CMC

By: 
John Paul O'Connor, Mayor


Dated: July 5, 2022

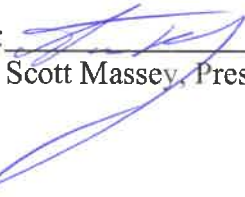
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
City Attorney, _____

ATTEST:

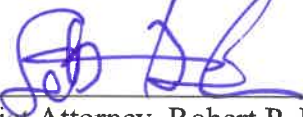
SEMINOLE IMPROVEMENT DISTRICT

By: 
K.M.C. Secretary _____

By: 
Scott Massey, President

Dated: 6/6/2022, 2022

DISTRICT ATTORNEY
Approved as to form and legal sufficiency

By:  *P.D.*
District Attorney, Robert P. Diffenderfer

FLORIDA PUBLIC UTILITIES COMPANY

By: _____
Name: _____
Title: _____

RESOLUTION NO. 2022-24

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE SEMINOLE IMPROVEMENT DISTRICT APPROVING THE TRI-PARTY AGREEMENT BETWEEN THE CITY OF WESTLAKE, THE SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES COMPANY RELATED TO PERMITTING OF FACILITIES PER CITY FRANCHISE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Seminole Improvement District (“SID”) exists pursuant to Chapter 2000-431, Laws of Florida and is the successor to Seminole Water Control District; and

WHEREAS, the City of Westlake (the “City”) is a Florida municipal corporation and is possessed of full home rule powers pursuant to Article VIII, Section 2 of the Florida Constitution; Chapter 166, Florida Statutes; and the City of Westlake Municipal Charter (the “Westlake Charter”); and

WHEREAS, Florida Public Utilities Company, a Florida corporation (the “Company”) has requested permission and a franchise agreement (the “Franchise Agreement”) from the City to erect, construct, operate, and maintain a Gas Distribution system and to import, transport, sell and distribute Gas within the City; and for these purposes to establish the used or useful facilities and equipment and to lay and maintain gas mains, service pipes, and any other appurtenances, as are used or useful in the sale, transportation and distribution of Gas within the City limits (SID, City, and Company, hereinafter collectively the “Parties”); and

WHEREAS, the Franchise Agreement provides, among other things, that the Company shall (i) obtain all required permits, approvals, licenses or consents in accordance with this Agreement prior to constructing or operating any facilities within the City; (ii) pay to SID any applicable fees in connection with the permit applications, reviews and inspections for development, and (iii) pay to the City all legally authorized fees, taxes, assessments, and costs levied, imposed or validly adopted by the City during the term of the Franchise Agreement, which shall include, but are not limited to public service taxes, ad valorem taxes (intangible, personal, real), occupational taxes, and licensing fees; and

WHEREAS, SID possesses certain powers pursuant to its enabling act and Florida Statutes, including the powers to construct, own, and maintain a number of types of public works and facilities and provide services including but not limited to public infrastructure and services related to water, sewer, drainage, irrigation, water management, parks, recreation, facilities, roadways and others more particularly described in the Enabling Act; and

WHEREAS, the City and the Company acknowledge that the rights-of-way and utility easements within the City are held by and under the jurisdiction of SID and the Company

will obtain permits from SID to construct, operate and occupy a portion of the utility easement with its facilities; and

WHEREAS, the utility easements owned by SID to be used by the Company are properties acquired and maintained by SID at expense to the property owners within the City limits, and the right to use SID's utility easements is a property right without which the Company would be required to invest capital and incur property acquisition costs; and

WHEREAS, in February 2018, SID and the City entered into that certain Interlocal Agreement Regarding the Provision of Certain Services, Infrastructure, and Public Facilities in the City of Westlake and for Assurance of Non-Duplication of Services ("Interlocal Agreement"); and

WHEREAS, pursuant to Section 16(c)(vi) of the Interlocal Agreement, the City and SID agreed that consultation is required prior to any undertakings by City or SID for tangible or physical infrastructure including gas lines; and

WHEREAS the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local government to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as building permitting and inspection services; and

WHEREAS, the City has prepared a draft ordinance (the "Ordinance") to effectuate the Franchise Agreement to the Company, attached as Exhibit "A," and

WHEREAS, the Parties desire to (i) acknowledge the Franchise Agreement granted to the Company, (ii) reflect the grant by SID to the Company of the right and privilege, to erect, construct, operate, and maintain a Distribution System in, on or under any Rights-of-ways within the City Limits, (iii) confirm SID and the City have engaged in the necessary consultation under the Interlocal Agreement, and (iv) establish the process by which the City and SID will coordinate the review and processing of permits applied for by the Company for the use of the Rights-of-way as contemplated in the Franchise Agreement, and to that end, have prepared the **Tri-Party Grant Agreement Among City of Westlake, the Seminole Improvement District, and Florida Public Utilities Company Related To Permitting of Facilities Per City Franchise Agreement**, (the Agreement") attached as Exhibit "B"; and

WHEREAS, after careful review and consideration, the District Engineer has determined that the Agreement is consistent with and implements the adopted Water Control Plan of the District and that execution of the Agreement will not be harmful to, and is in the best interests of, the District.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE SEMINOLE IMPROVEMENT DISTRICT AS FOLLOWS:


1. The recitals set forth above are adopted by the Board as the findings of SID and are incorporated herein.

2. This Resolution is adopted pursuant to the Act.
3. Seminole Improvement District, on behalf of its successors and assigns, hereby consents to the Agreement in the form attached hereto as Exhibit "B."
4. SID's consent is predicated upon the City's adoption of the Ordinance largely in conformance to the draft attached as Exhibit "A", and the Agreement shall not be effective until such time as the Ordinance becomes effective, including the running of any applicable appeal periods thereto.
5. The President and Secretary/Treasurer are hereby authorized and directed to execute and deliver the Agreement any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for implementation of this Resolution, in conformance with this Resolution.
6. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions of this Resolution.
7. This resolution shall take effect upon its passage in the manner provided by law.

Adopted by the Board of Supervisors this 6 day of June, 2022.



Scott Massey, President



Kenneth Cassel, Assistant Secretary

Approved as to Form:



District Attorney

EXHIBIT "A"

Draft Westlake Ordinance Granting to Florida Public Utilities a Non-Exclusive Franchise

File Attachments for Item:

C. Education and Youth Advisory Board - 1 Vacancy - Unexpired Term, Ending September 2023

Submitted By: City Clerk



Meeting Agenda Item Coversheet

MEETING DATE:		August 2, 2022	Submitted By: City Clerk	
SUBJECT: <i>This will be the name of the Item as it will appear on the Agenda</i>		Education and Youth Advisory Board - 1 Vacancy - Unexpired Term, Ending September 2023		
STAFF RECOMMENDATION: (MOTION READY)		Motion to appoint _____ to the Education and Youth Advisory Board to serve an unexpired term ending September		
SUMMARY and/or JUSTIFICATION:		<p>The City Clerk's office received a resignation from Board Member, Robin Medvetz, creating a vacancy to fulfill the remainder of the term ending September 2023. The notice of vacancy was published July 15, 2022 calling for applications to fulfill the unexpired term.</p> <p>The deadline to receive applications closed July 27, 2022 and two applications were received for council review.</p>		
SELECT, if applicable	AGREEMENT:		BUDGET:	
	STAFF REPORT:		PROCLAMATION:	
	EXHIBIT(S):		OTHER:	
IDENTIFY EACH ATTACHMENT. <i>For example, an agreement may have 2 exhibits, identify the agreement and Exhibit A and Exhibit B</i>	Application - Kaplan, Anita Resume - Kaplan, Anita Application - Merola, Ashley Resume - Merola, Ashley			
SELECT, if applicable	RESOLUTION:		ORDINANCE:	
IDENTIFY FULL RESOLUTION OR ORDINANCE TITLE <i>(if Item is not a Resolution or Ordinance, please erase all default text from this field's textbox and leave blank)</i> <u>Please keep text indented.</u>				
FISCAL IMPACT (if any):				\$



Advisory Board/Committee Application

DATE:	7-22-22	NAME:	Anita S. Kaplan Ed.D
ADDRESS:	5459 Santa Rosa Lane, Westlake, Fl.		
PHONE:	786-472-0179	E-MAIL:	akaplan8@gmail.com
What is the Board/Committee of your choice?		Youth and Education Advisory Board.	
How long have you lived in the City of Westlake?		One Year / 25 days	
Are you a full-time resident? If not, how many months do you reside in City?			yes
Are you a registered voter?		yes	
Current occupation and employer, if retired, please list previous occupation and employer:		Retired; Palm Beach State College	
Do you currently hold public office? If so, what is the office?			no
Please list any business, volunteer, community activities you have been involved in:			
Reviewed Palm Beach Post Scholarship Applications. Leadership Palm Beach County, participant Class of 2014			
Have you ever been convicted, plead no contest, plead guilty or had the adjudication of guilt withheld for any criminal offense other than a minor traffic violation? If yes, please explain.			
no			
Would you and/or any organization with which you are affiliated, benefit from decisions or recommendations made by this advisory board/committee? If yes, explain:			
no			
Experience. Please list experience and/or and any knowledge, skills, abilities, or qualifications that you possess and believe relevant to the board/committee for which you seek appointment:			
Please see attached resume			

Resumes are encouraged to be attached, and any other information you feel pertinent. This application should be forwarded to the City Clerk, Zoie Burgess: zburgess@westlakegov.com or by mail/in person: City of Westlake, City Clerk's Office 4001 Seminole Pratt Whitney Road, Westlake, Florida 33470.

Thank you for volunteering to serve the citizens of Westlake.

ANITA S. KAPLAN, Ed.D.

5459 Santa Rosa Lane
Westlake, Florida 33470

cell 786-472-0179
akaplan8@gmail.com

PROFESSIONAL SUMMARY

Consummate education leader and visionary with significant, comprehensive experience as an academican, diversity advocate, and program innovator. Demonstrated success in the development of community, education, and business partnerships leading to mutually advantageous outcomes. A polished, collaborative, high-energy administrator with integrity, persuasive communication skills, and a strong purposeful focus. Conversant in Spanish and French. Community/business relations are a particular specialty.

Proven Expertise:

- Fundraising through Grants Acquisition
- Foundation Initiatives
- Workplace Responsive Curriculum Design
- Business Partnership Collaboration
- Chairing Interdisciplinary Workshops
- Public Relations
- Curriculum Planning and Application
- Budget Design and Implementation
- Transformational Leadership and Change
- Mentoring and Training Programs
- Community Relations
- Presentations
- Business Sponsored Partnerships
- Time Management

PROFESSIONAL EXPERIENCE

Palm Beach State College, Lake Worth Beach, FL

2011-2020

Dean, Bachelor's Degree Programs (Retired)

Provided leadership for all bachelor's faculty and staff in the design, development, and delivery of all online and in-person bachelor's degree Programs. Managed all Bachelor advisors and admissions staff.

- Lead the growth, and expansion of all bachelor's degree students from 300 to over 3,000 students.
- Selected as a participant in the Leadership Palm Beach County class of 2014.
- Created a community Dean's Council Advisory Board to include input from the community.
- Lead the grant writing process for the acquisition of a three million grant.

MEDICAL CENTER CAMPUS, MIAMI DADE COLLEGE, Miami, FL

2008 - 2010

President

Served as the Campus President for the Medical Center Campus at Miami Dade College which offers more than 22 degree and certificate programs in the Nursing and Health Sciences areas.

Established a unique partnership with the University of Miami Hospital, the South Florida Workforce Board, and the School of Nursing that guaranteed jobs at the UM hospital for a specialized cohort of nursing students with tuition and fees paid by the South Florida Workforce Board and a paid internship by the hospital.

- Led the implementation and delivery of the Nursing BSN program, providing for both online and seated options, and the Physician Assistant BAS Program (Bachelor of Applied Health Sciences).
- Designed and delivered a campus-based, cross-discipline Emerging Leaders President's Panel to explore professional development activities and best practices for faculty and administrators.
- Raised over \$6M in grants and Foundation Funds.

PROFESSIONAL EXPERIENCE

ERIE COMMUNITY COLLEGE, Williamsville, NY 2003 – 2008

Executive Vice President, Academic Affairs

Chief Academic Officer for over 60 degree and certificate programs. Restructured the college academic divisions to reflect institutional priorities leading to over 30 new business/partnership initiatives.

- Initiated and delivered a partnership program for over \$450,000 with a major health care provider and the Health Sciences division.

NEW HAMPSHIRE COMMUNITY TECHNICAL COLLEGE, Manchester, NH 2003

Vice President Student and Community Services

SOUTHERN MAINE TECHNICAL COLLEGE, South Portland, ME 2002

Vice President/Dean of Faculty

NORTHEASTERN UNIVERSITY, Boston, MA 1997 - 1998

American Council on Education (ACE) Fellow

NORTH SHORE COMMUNITY COLLEGE, Danvers, MA 1974 - 2002

Assistant Dean, External Relations

Executive Director Corporate and Economic Development (1999 -2002)

Dean, Curriculum, and Instruction (Academic Affairs) (1991 - 1999)

Division Chair, Liberal Studies (1988 - 1991)

Director, Academic Assistance Dept. (1978 - 1988)

Professor, Academic Assistance Department (1974 - 1978)

PROFESSIONAL ORGANIZATIONS

- WIB Board Member – Erie County, NY
- South Florida Regional Extension Center Executive Board Member, Founding Member
- SUNY Professional Development Committee
- The New England Workforce Network (NEWN), Founding Director
- Women in World Trade, Trade Mission Design Team
- NEASC, SACS, Middle States, Accreditation Site Team Member
- ACE Fellows Board Member
- New England Assessment Network (NEAN), Founding Board of Directors, Annual Conference Planning Coordinator

EDUCATION

UNIVERSITY OF MASSACHUSETTS, Amherst, MA

Ed.D. Higher Education Policy, Research, and Administration

UNIVERSITY OF MASSACHUSETTS, Boston, MA

M.Ed. Secondary Reading Specialist/Counseling

NORTHEASTERN UNIVERSITY, Boston, MA

B.A. Modern Languages/Secondary Education



Advisory Board/Committee Application

DATE: 7/20/22	NAME: Ashley Merola
ADDRESS:	4687 Citron Way Westlake, FL 33470
PHONE: 5613076236	E-MAIL: AshleySGoldstein@gmail.com
What is the Board/Committee of your choice?	Education & Youth Advisory Board
How long have you lived in the City of Westlake?	3 months
Are you a full-time resident? If not, how many months do you reside in City?	Full-time
Are you a registered voter?	Yes
Current occupation and employer, if retired, please list previous occupation and employer:	Teacher - Inlet Grove High School
Do you currently hold public office? If so, what is the office?	No
Please list any business, volunteer, community activities you have been involved in:	
Have you ever been convicted, plead no contest, plead guilty or had the adjudication of guilt withheld for any criminal offense other than a minor traffic violation? If yes, please explain.	
No	
Would you and/or any organization with which you are affiliated, benefit from decisions or recommendations made by this advisory board/committee? If yes, explain:	
No	
Experience. Please list experience and/or and any knowledge, skills, abilities, or qualifications that you possess and believe relevant to the board/committee for which you seek appointment:	
I have been teaching English and Intensive Reading at Inlet Grove High School in Riviera Beach, FL since 2009. I have a Bachelor's Degree in English and a Master's Degree in Reading Education. I have a passion for helping students and am proud to have helped thousands of students throughout the years become college and career ready. Aside from my duties in the classroom, I have been the senior class co-sponsor for my school.	

Resumes are encouraged to be attached, and any other information you feel pertinent. This application should be forwarded to the City Clerk, Zoie Burgess: zburgess@westlakegov.com or by mail/in person: City of Westlake, City Clerk's Office 4001 Seminole Pratt Whitney Road, Westlake, Florida 33470.

Thank you for volunteering to serve the citizens of Westlake.

ASHLEY MEROLA

ASHLEYSGOLDSTEIN@GMAIL.COM

4687 Citron Way • Westlake, Florida 33470 • (561) 307-6236

▪ Objective

To work with the Westlake Education and Youth Advisory Board to help students in our city.

▪ Employment

INLET GROVE COMMUNITY HIGH SCHOOL

OCTOBER 2009 – CURRENT

Reading/English Instructor

- AP English Literature and Composition certified
- AP English Language and Composition certified
- Reading K-12 Certified
- English 9-12 Certified
- ESOL Endorsed
- International Baccalaureate Theory of Knowledge Certified
- Senior Class Co-Sponsor

▪ Education

MASTER'S DEGREE IN READING EDUCATION

AUGUST 2009 – DECEMBER 2010

Florida Atlantic University

BACHELOR'S DEGREE IN ENGLISH

AUGUST 2006 – APRIL 2009

Florida Atlantic University

Boca Raton, Florida

MINOR IN WOMEN'S STUDIES

TEACHING CERTIFICATION: ENGLISH 6-12, READING K-12

2009 - Current

2008-Current Sigma Tau Delta – English Honor Society

ENGLISH MAJOR

AUGUST 2005 - APRIL 2006

Florida State University

Tallahassee, Florida

HIGH SCHOOL DIPLOMA

AUGUST 2001- MAY 2005

Wellington Community High School

Wellington, Florida

File Attachments for Item:

D. Second addendum to professional services agreement between City of Westlake and Chen Moore & Associates

Submitted By: Administration

RESOLUTION NO. 2022-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A SECOND ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WESTLAKE AND CHEN MOORE & ASSOCIATES, INC.; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



Meeting Agenda Item Coversheet

MEETING DATE:		July 28, 2022	Submitted By: Administration	
SUBJECT: <i>This will be the name of the Item as it will appear on the Agenda</i>		Second addendum to professional services agreement between City of Westlake and Chen Moore & Associates		
STAFF RECOMMENDATION: (MOTION READY)		Motion to approve second addendum to professional services agreement between City of Westlake and Chen Moore & Associates		
SUMMARY and/or JUSTIFICATION:		<p>The City of Westlake entered into an agreement for professional planning services with Chen Moore & Associates on September 19, 2016, under a competitive selection process. This agreement was entered into under a three-year term with an option to renew for an additional three-year term upon mutual agreement.</p> <p>The proposed Addendum is agreeing to extend services agree to extend the term for an additional three (3) year period up to an including September 18, 2025. Upon the mutual consent of the parties, the Original Agreement may be renewed for an additional period of two (2) years up to and including September 18, 2027.</p>		
SELECT, if applicable	AGREEMENT:		BUDGET:	
	STAFF REPORT:		PROCLAMATION:	
	EXHIBIT(S):		OTHER:	
IDENTIFY EACH ATTACHMENT. <i>For example, an agreement may have 2 exhibits, identify the agreement and Exhibit A and Exhibit B</i>				
SELECT, if applicable	RESOLUTION:		ORDINANCE:	
IDENTIFY FULL RESOLUTION OR ORDINANCE TITLE <i>(if Item is not a Resolution or Ordinance, please erase all default text from this field's textbox and leave blank)</i> <u>Please keep text indented.</u>				
FISCAL IMPACT (if any):			\$	

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CITY OF WESTLAKE

RESOLUTION NO. 2022-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A SECOND ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WESTLAKE AND CHEN MOORE & ASSOCIATES, INC.; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council deems it to be in the best interests of the City to approve and authorize the proper City Council Member to execute a Second Addendum to Professional Services Agreement between the City of Westlake and Chen Moore & Associates, Inc.;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA:

SECTION 1. The foregoing "WHEREAS" clause is hereby ratified and confirmed by the City Council and incorporated herein by this reference.

SECTION 2. The City Commission of the City of Westlake, Florida, hereby approves and authorizes the proper City Council Member to execute a Second Addendum to Professional Services Agreement between the City of Westlake and Chen Moore & Associates, Inc. A copy of the Second Addendum is attached hereto as Exhibit "A".

SECTION 3. All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extend of such conflict.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

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SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED by City Council for the City of Westlake, on this ____ day of _____2022.

City of Westlake
JohnPaul O'Connor, Mayor

Zoie Burgess, City Clerk

**SECOND ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF WESTLAKE AND CHEN MOORE & ASSOCIATES,
INC.**

THIS SECOND ADDENDUM TO AGREEMENT (“Second Addendum”), dated the ____ day of _____, 2022, between:

THE CITY OF WESTLAKE, a Florida municipal corporation, hereinafter referred to as "CITY,"

and

CHEN MOORE & ASSOCIATES, INC., a Florida corporation hereinafter referred to as "CONSULTANT".

WHEREAS, on September 19, 2016, the CITY entered into an agreement with CONSULTANT for professional services (the "Original Agreement") pursuant to Section 287.055, F.S.; and

WHEREAS, on September 9, 2019, the CITY and CONSULTANT entered into an Addendum to Professional Services Agreement to renew the term of the Original Agreement for an additional three (3) years (“Addendum”); and

WHEREAS, the CITY and CONSULTANT agree to extend the term of the Original Agreement, as amended for three (3) additional years and provide for an additional renewal period of two (2) years upon mutual consent of the parties; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the receipt of which are hereby acknowledged, the CITY and CONSULTANT agree to amend the Original Agreement, as amended, as follows:

1. RECITALS: Each whereas clause set forth above is true and correct and incorporated herein by this reference.

2. TERM: Article 1 of the Original Agreement, as amended, is hereby extended as follows. The CITY and CONSULTANT agree to extend the term for an additional three (3) year period up to and including September 18, 2025. Upon the mutual consent of the parties, the Original Agreement may be renewed for an additional period of two (2) years up to and including September 18, 2027.

3. The Original Agreement is hereby amended to specifically create Article 20 & Article 21 as follows:

ARTICLE 20. SCRUTINIZED COMPANIES. CONSULTANT certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONSULTANT agrees to observe the requirements of Section 287.135, F.S., for applicable sub-

agreements entered into for the performance of services under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONSULTANT, its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONSULTANT, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

ARTICLE 21. Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, CONSULTANTS, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. CONSULTANT shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

(i) All persons employed by a CONSULTANT to perform employment duties within Florida during the term of the contract; and

(ii) All persons (including subvendors/subconsultants/subcontractors) assigned by CONSULTANT to perform work pursuant to the contract with the City of Westlake. The CONSULTANT acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Westlake; and

(iii) The CONSULTANT shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. CONSULTANT shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The CONSULTANT shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of one (1) year after the date of termination.

4. PURSUANT TO FLORIDA STATUTES §558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

5. Section 3(a) of the Original Agreement is hereby amended to revise Schedule A as set forth in this Second Addendum attached hereto and incorporated herein.

6. **ORIGINAL AGREEMENT:** All of the terms and conditions of the Original Agreement, as amended from time to time, shall be binding and remain in full force and effect except as expressly amended hereinabove. In the event of a conflict between the Original Agreement, Addendum, and this Second Addendum, this Second Addendum shall prevail.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seal the day and year first written above.

CITY OF WESTLAKE:

Attest:

BY: _____
Kenneth G. Cassel, City Manager

Zoie P. Burgess, CMC
City Clerk

Approved as to form and legal
sufficiency:

Donald J. Doody, Esq.
City Attorney

**CHEN MOORE & ASSOCIATES, INC., a
Florida corporation**

ATTEST:

Peter Moore, President & CEO

Name: _____



2022 Labor Hourly Rate Schedule

<u>Labor Category</u>	<u>Hourly Rate</u>
President	\$410
Principal	\$325
Principal Engineer	\$225
Senior Engineer	\$200
Project Engineer	\$130
Associate Engineer	\$115
Engineer	\$105
Principal Landscape Architect	\$160
Senior Landscape Architect	\$135
Project Landscape Architect	\$115
Associate Landscape Architect	\$100
Senior Environmental Scientist	\$145
Senior Designer	\$140
Designer	\$115
Senior Technician	\$90
Technician	\$85
Senior Construction Specialist	\$130
Construction Specialist	\$90
Administrative Staff	\$80
Intern	\$55

File Attachments for Item:

E. Third Addendum to the Law Enforcement Service Agreement

Submitted By: Administration

RESOLUTION NO. 2022-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT BETWEEN THE CITY OF WESTLAKE AND RIC L. BRADSHAW, SHERIFF OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE



Meeting Agenda Item Coversheet

MEETING DATE:		August 2, 2022	Submitted By: Administration		
SUBJECT: <i>This will be the name of the Item as it will appear on the Agenda</i>		Third Addendum to the Law Enforcement Service Agreement			
STAFF RECOMMENDATION: (MOTION READY)		Motion to Approve Third Addendum to the Law Enforcement Service Agreement			
SUMMARY and/or JUSTIFICATION:		<p>The City entered into an agreement for law enforcement services with the Palm Beach County Sheriff's Office on or around August 12, 2019 for a five-year term at a cost of \$650,000.00.</p> <p>In keeping with the agreement, the Sherriff Office shall submit cost for services in anticipation of the City's budget process. The attached second addendum identifies the anticipated cost for Fiscal Year October 1, 2022, through September 30, 2023.</p> <p>The annual cost for services is \$669,500.00.</p>			
SELECT, if applicable		AGREEMENT:		BUDGET:	
		STAFF REPORT:		PROCLAMATION:	
		EXHIBIT(S):		OTHER:	
IDENTIFY EACH ATTACHMENT. <i>For example, an agreement may have 2 exhibits, identify the agreement and Exhibit A and Exhibit B</i>		Third Addendum to the Law Enforcement Service Agreement Agreement for Law Enforcement Services			
SELECT, if applicable		RESOLUTION:		ORDINANCE:	
IDENTIFY FULL RESOLUTION OR ORDINANCE TITLE <i>(if Item is <u>not</u> a Resolution or Ordinance, please erase all default text from this field's textbox and leave blank) <u>Please keep text indented.</u></i>					
FISCAL IMPACT (if any):		Annual Budget		\$ 669,500.00	

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CITY OF WESTLAKE

RESOLUTION NO. 2022-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE A THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT BETWEEN THE CITY OF WESTLAKE AND RIC L. BRADSHAW, SHERIFF OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council deems it to be in the best interests of the City to approve and authorize the proper City Council Member to execute a Third Addendum to the Law Enforcement Service Agreement between the City of Westlake and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA:

SECTION 1. The foregoing "WHEREAS" clause is hereby ratified and confirmed by the City Council and incorporated herein by this reference.

SECTION 2. The City Commission of the City of Westlake, Florida, hereby approves and authorizes the proper City Council Member to execute a Third Addendum to the Law Enforcement Service Agreement between the City of Westlake and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida. A copy of the Third Addendum is attached hereto as Exhibit "A".

SECTION 3. All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extend of such conflict.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

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SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED by City Council for the City of Westlake, on this ____ day of _____ 2022.

City of Westlake
JohnPaul O'Connor, Mayor

Zoie Burgess, City Clerk

AGREEMENT FOR LAW ENFORCEMENT SERVICES BY AND BETWEEN THE PALM BEACH COUNTY SHERIFF’S OFFICE AND THE CITY OF WESTLAKE

This Agreement is made by and between the CITY OF WESTLAKE, a municipal corporation organized and existing under the laws of the State of Florida which municipality is wholly located within the boundaries of Palm Beach County, Florida (hereinafter referred to as “CITY”) and Ric L. Bradshaw, Sheriff of Palm Beach County Sheriff’s Office, Florida, (hereinafter referred to collectively as “SHERIFF”).

WITNESSETH:

WHEREAS, the CITY is desirous of maintaining a high level of competent professional law enforcement services in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, the SHERIFF has agreed to provide the CITY a high level of professional law enforcement services and the CITY is desirous of contracting for such services upon the terms and conditions hereinafter set forth; and

WHEREAS, the CITY is desirous of obtaining its law enforcement services through a contractual relationship with the SHERIFF.

NOW THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, **IT IS HEREBY AGREED AS FOLLOWS:**

ARTICLE 1 – DEFINITIONS

1.1 For the purposes of this Agreement, the following terms shall have the respective meanings hereinafter set forth:

- A. Executive Officer shall mean a non-exempt employee who is appointed by the SHERIFF as a deputy sheriff holding the rank of lieutenant who shall perform duties and functions as specifically set forth in Article 2 of this Agreement.
- B. Sergeant shall mean an individual who is appointed by the SHERIFF as a deputy sheriff who shall plan, direct, patrol, supervise, and/or perform the activities of a deputy sheriff as set forth in Article 2 of this Agreement.

- C. Deputy Sheriff shall mean an individual, other than those described in A, and B, of this Article, who is appointed by the SHERIFF in accordance with Section 30.07, Florida Statutes, and who has executed any necessary oath which is required by law to serve in the position of a certified law enforcement deputy sheriff and perform the duties and responsibilities as set forth in Article 2 of this Agreement.
- D. Patrol Unit shall mean one staffed marked patrol car/truck and all standard equipment as defined by the SHERIFF's general orders.
- E. Service shall mean comprehensive law enforcement protection provided each day of the year on a twenty-four (24) hour per day basis.
- F. City Manager shall mean the chief administrative officer of the CITY and shall include any individual employed by the CITY or any contracted third party who is delegated to perform the duties and responsibilities of the management and oversight of the CITY functions related to law enforcement services.

ARTICLE 2 – LEVELS OF SERVICE

2.1 Law Enforcement Patrol Services

- A. The SHERIFF shall provide to the CITY, for the term hereinafter set forth, as the same may be extended in accordance with the provisions hereof, competent professional law enforcement services within and throughout the corporate limits of the CITY to the extent and in the manner herein described.
- B. The SHERIFF shall assign personnel, through request and consultation with the City to provide the level of professional law enforcement services as established in Exhibit A, attached hereto and incorporated herein, or as such service has been supplemented and enhanced as a result of this Agreement and any amendments and supplements thereto.
- C. Law enforcement services shall encompass all those duties and functions of the type coming within the jurisdiction of, and customarily provided by, municipal police departments, which include receiving of 911 calls, dispatch of calls for law enforcement services, arrest of criminal offenders and citations issued to traffic violators, traffic control, testifying in court, community policing, high visibility patrol within the CITY (including all CITY facilities and parks), and Seminole Improvement District facilities wholly within the corporate limits of the CITY, and other duties in accordance with the SHERIFF's general orders, the CITY Charter and ordinances, Palm Beach County Charter and ordinances that are applicable within the CITY, and statutes of the State of

Florida. The Sheriff's deputies will not act as Code Enforcement officers, however, Sheriff's deputies may enforce City Ordinances to the extent the ordinance authorizes arrest and provides for fines and/or imprisonment, as set forth in Chapter 162, Florida Statutes. Performance of all duties of sheriff's deputies shall be in accordance with Sheriff's Office General Orders and any applicable Collective Bargaining Agreement. Additionally, law enforcement patrol services shall encompass response to alarm calls, and the SHERIFF shall respond to alarm calls consistent with the Palm Beach County Alarm Ordinance as it may from time-to-time be amended.

D. THE SHERIFF shall additionally provide to the CITY when necessary, at no additional cost to the CITY the following expertise, services, and facilities, which the SHERIFF would normally provide to other law enforcement agencies:

1. Full service crime lab.
2. Aviation and helicopter unit.
3. Organized Crime investigations (includes Vice & Narcotics).
4. Prisoner and jails services.
5. Criminal Investigations.
6. Marine Patrol.
8. Evidence Custodian.
9. Other support services, such as Traffic Homicide, Canine, etc. (as available to other SHERIFF districts or law enforcement jurisdictions).

E. The SHERIFF shall provide the CITY, upon the request of the CITY, such supplemental law enforcement services of a deputy sheriff, beyond those services described herein, as may be needed from time-to-time that cannot be accommodated through flexible scheduling of on-duty sheriff's deputies. Compensation shall be in accordance with Article 5.3. Those services typically include, but are not limited to, providing services at:

1. CITY Council meetings.
2. Board and Committee meetings.
3. Special Events sponsored by the CITY.

- F. Unless exigent circumstances exist, all deputies assigned to the City of Westlake shall remain within the corporate limits of the City of Westlake.
- G. Unless operational necessity dictates otherwise, there shall be a minimum of one (1) patrol zone with a minimum staffing of one (1) deputy per shift.
- H. Law enforcement patrol supervision shall be provided by a Sergeant or higher ranking officer each day of the year, twenty-four (24) hours per day through District 15. Sergeants shall not be included in calculating the deputy sheriff staffing requirements set forth in this agreement.
- I. Each patrol unit shall prominently display on the vehicle's exterior "City of Westlake" and the City logo, designed to match the scheme of Sheriff's vehicles.

2.2 Executive and Administrative Services

- A. Performance of all duties and responsibilities of the Executive Officer of District 15 shall be in accordance with SHERIFF's general orders, any applicable collective bargaining agreements, and this Agreement.

2.3 Administrative Responsibilities

- A. The Executive Officer of District 15 or designee will notify the City Manager in a timely manner of any major/significant crimes, incidents or emergencies that occur within the CITY.
- B. From time to time, upon reasonable notice, the Executive Officer of District 15 or designee shall meet with the CITY to discuss law enforcement issues related to services impacting the CITY.

2.4 Fiscal Responsibilities

- A. The SHERIFF shall provide to the CITY cost changes associated with the renewal of law enforcement services by no later than May 31st of each prior fiscal year through the term of the agreement.
- B. Staffing increases for deputy sheriffs shall be supported by crime and law enforcement activity analysis and shall be approved by the City Council prior to implementation.

2.5 The SHERIFF shall furnish to and maintain for the benefit of the CITY, without additional cost therefore, all necessary labor, supervision, equipment, vehicles, and supplies necessary and proper for the purpose of performing the services, duties, and responsibilities set forth and as necessary to maintain the level of service to be rendered hereunder.

ARTICLE 3 – OTHER RESPONSIBILITIES

3.1 Employment Responsibility

- A. All sheriffs' deputies and other persons employed by the SHERIFF in the performance of such services, functions and responsibilities, as described and contracted for herein, for the CITY are deemed Palm Beach County Sheriff's Office employees and not employees of the CITY.
- B. The SHERIFF shall be responsible for all insurance benefits, compensation, and/or any status or right during the course of employment with the SHERIFF. Accordingly, the CITY shall not be called upon to assume any liability for, or direct payment of, any salaries, wages, contribution to the Florida Retirement System, insurance premiums or payments, workers' compensation benefits under Chapter 440, Florida Statutes, or any other amenities of employment to any SHERIFF personnel performing services, duties, and responsibilities hereunder for the benefit of the CITY and residents thereof.

3.2 Employment: Right of Control

- A. The SHERIFF shall have and maintain the responsibility for and control of the delivery of services, the standards of performance, the discipline of personnel and other matters incident to the performance of services, duties, and responsibilities as described and contemplated herein.
- B. The CITY does hereby vest in each deputy sheriff, to the extent allowed by law, the police powers of the CITY which are necessary to implement and carry forth the services, duties, and responsibilities imposed upon the SHERIFF hereby, for the sole and limited purpose of giving official and lawful status and validity to the performance thereof by such deputy sheriff.

ARTICLE 4 – CITY RESPONSIBILITIES

4.1 Office Space

- A. All positions provided for in this agreement will be located at the SHERIFF's District 15 office and will carry out their job functions as required under this Service Agreement.
- B. Future space planning shall be coordinated with the SHERIFF and the CITY.

4.2 The CITY shall provide two (2) copies of CITY'S ordinances as adopted and two (2) copies of the Code of Ordinances with updates as received.

ARTICLE 5 – CONSIDERATION

5.1 The total amount due for all services beginning October 1, 2019 through September 30, 2020, (excepting those costs identified and funded as set forth in Article 5.5), shall be based on an annual amount of \$650,000.00.

5.2 The total amount due for all law enforcement services for subsequent years shall be based upon the cost submitted by the SHERIFF as set forth in Article 2, Section 2.4, during the CITY'S budget process and approved by the CITY Council.

5.3 Additional law enforcement services as set forth in Article 2.1(E) shall be compensated at a rate of \$90.00 per hour and will be billed by the SHERIFF to the CITY on a monthly basis. This rate is subject to annual review and change upon agreement between the CITY and SHERIFF. Alternatively, the CITY may opt to submit an application for an off-duty permit.

5.4 The CITY agrees to pay the SHERIFF in equal monthly installments on or before the 25th day of the month preceding the month of service.

5.5 The CITY shall fund the cost of any third-party agreements related to the performance of this Law Enforcement Services Agreement, including additional crime analysis and audit functions as determined necessary and approved by the CITY.

5.6 The consideration recited herein constitutes the entire consideration to be paid herein under and upon the payment thereof, in the manner and at the times prescribed herein.

ARTICLE 6 – AUDIT OF RECORDS

- 6.1 The CITY may, upon reasonable notice to the SHERIFF and in accordance with Florida law, examine the existing SHERIFF's records relating to the services provided pursuant to the terms of this Agreement.
- 6.2 Records not prepared by the SHERIFF in the ordinary course of business may be provided as the CITY and SHERIFF may agree.
- 6.3 The CITY may elect to perform the audit itself or to have an outside third party do so.

ARTICLE 7 – FINES AND FORFEITURES

7.1 Law Enforcement Education Funds

All law enforcement education funds levied and collected by the Clerk of the Court and earmarked for the CITY pursuant to Section 938, Florida Statutes, shall be assigned over to the SHERIFF and used by the SHERIFF for the law enforcement education purposes for those officers assigned to the City of Westlake. Apart from such funds, the SHERIFF shall have no claim or right to any other monies or things of value which the CITY receives or may hereinafter receive by way of entitlement programs, grants or otherwise in connection with police or law enforcement activities.

7.2 Chapter 316, Florida Statutes, Fines

All fines and forfeitures levied and collected pursuant to Chapter 316 Florida Statutes, as the same may be amended from time-to-time, shall be forwarded to the CITY consistent with the distribution requirements of Section 318.21 Florida Statutes.

7.3 Alarm Ordinance Fines and Fees.

The CITY shall be entitled to receive a portion of the fines and alarm permit revenues generated within the jurisdictional limits of the CITY pursuant to the Palm Beach County Alarm Ordinance, as currently adopted and as it may be amended from time to time. The Sheriff will deduct a maintenance fee of twenty five percent (25%) from the proceeds of the alarm fines and alarm permit revenues for those costs associated with the administration of the alarm ordinance, which includes but is not limited to: Maintenance of equipment, postage, paper, envelopes and support staff related to the billing processing of alarm permits.

ARTICLE 8 – INSURANCE

- 8.1 The SHERIFF is a self-insured entity pursuant to Chapter 768, Florida Statutes, and will maintain sufficient general liability and automobile liability self-insurance funds as required by law.
- 8.2 Self-insurance funds necessary to cover general liability and automobile liability will remain throughout the term of this Agreement, as the same may be extended in accordance with provisions thereof.

ARTICLE 9 – HOLD HARMLESS

- 9.1 To the extent permitted by Florida law and without waiving any statutory and constitutional Sovereign Immunity protections, the SHERIFF holds the CITY harmless from any and all manner of action and actions, cause and causes of action, suits, trespasses, damages, judgments, executions, claims, and demands of any kind whatsoever, in law or in equity, which may result from or arise out of the intentional or negligent acts of the employees or appointees of the SHERIFF while in the performance of this Agreement, and the SHERIFF shall indemnify the CITY for any and all damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which the CITY might suffer in connection with or as a result of the intentional or negligent acts and the alleged intentional or alleged negligent acts of the employees or appointees of the SHERIFF while in the performance of this Agreement.

In no event shall the SHERIFF hold harmless or indemnify the CITY from liability, suits, cause and causes of action, trespasses, damages, judgments, executions, claims, and demands of any kind whatsoever, in law or equity, which may result from or arise out of intentional or negligent acts of the CITY, its employees, agents, servants, visitors, and/or any other third parties.

- 9.2 To the extent permitted by Florida Law and without waiving any statutory and constitutional Sovereign Immunity protections, the CITY holds the SHERIFF harmless from any and all manner of action and actions, cause and causes of action, suits, trespasses, damages, judgments, executions, claims, and demands of any kind whatsoever, in law or in equity, which may result from or arise out of the intentional or negligent acts of the employees or appointees of the CITY while in the performance of this Agreement, and the CITY shall indemnify the SHERIFF for any and all damages, judgments, claims, costs, expenses, including reasonable attorney's fees, which the SHERIFF might suffer in connection with or as a result of the intentional or negligent acts and the alleged intentional or alleged negligent acts of the employees or appointees of the CITY while in the performance of this Agreement.

In no event shall the CITY hold harmless or indemnify the SHERIFF from liability, suits, cause and causes of action, trespasses, damages, judgments, executions, claims, and demands of any kind whatsoever, in law or equity, which may result from or arise out of the intentional or negligent acts of the SHERIFF, its employees, agents, servants, visitors, and/or any other third parties.

ARTICLE 10 – INDEPENDENT CONTRACTOR

10.1 The SHERIFF, for the purposes of this Agreement, is and shall remain an independent contractor; provided, however, such independent contractor status shall not diminish the power and authority vested in the SHERIFF and his Deputies pursuant to law and Article 3.

ARTICLE 11 – TERM

11.1 This Agreement shall remain in full force and effect commencing October 1, 2019 and ending September 30, 2025, all dates inclusive, and shall automatically renew for an additional five (5) year term, unless the Agreement is otherwise extended, amended, or terminated in accordance with the terms thereof.

11.2 In the absence of a notice of termination in accordance with Article 12, this Agreement shall automatically renew annually subject to the costing proposal by the SHERIFF and subsequent to approval by the CITY.

ARTICLE 12 – TERMINATION

12.1 The CITY or the SHERIFF may terminate this Agreement with or without cause upon written notice to the other party of this Agreement as set forth in this subsection. Written notice shall be delivered by June 30th of any given year for termination effective as of October 1st of that same year. This written notice must be hand delivered and/or sent by Certified Mail, Return Receipt Requested, to the SHERIFF or the City Manager.

ARTICLE 13 – TRANSITION

13.1 In the event of the termination or expiration of this Agreement, the SHERIFF and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from the SHERIFF's Office to a CITY Police Department, and to maintain during such period of transition the same high quality of law enforcement services otherwise afforded to the residents of the CITY pursuant to the terms hereof.

ARTICLE 14 – AUTHORITY TO EXECUTE; NO CONFLICT CREATED

- 14.1 The SHERIFF, by his execution hereof, does hereby represent to the CITY that he has full power and authority to make and execute this Agreement pursuant to the power so vested in him under the Constitution and Laws of the State of Florida to the effect that:
 - A. His making and executing this Agreement shall create a legal obligation upon himself and the Palm Beach County Sheriff’s Office.
 - B. This Agreement shall be enforceable by the CITY according and to the extent of the provisions hereof.
- 14.2 Nothing herein contained and no obligation on the part of the SHERIFF to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of the SHERIFF pursuant to the laws of the State of Florida.
- 14.3 The City Mayor, by his execution hereof, does represent to the SHERIFF that he/she has full power and authority to make and execute this Agreement on behalf of the City of Westlake, pursuant to Resolution No. R2019-___ of the City Council.
- 14.4 Nothing herein contained is any way contrary to or in contravention of the Charter of the City of Westlake or the laws of the State of Florida.

ARTICLE 15 – NOTICE

- 15.1 The persons to receive notice under this Agreement are:

CITY MANAGER:

Kenneth Cassel
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

CITY ATTORNEY:

Pam E. Booker
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

SHERIFF:

Ric L. Bradshaw
Palm Beach County Sheriff’s Office
3228 Gun Club Road
West Palm Beach, FL 33406

SHERIFF'S AGENCY ATTORNEY:
Department of Legal Affairs
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406

ARTICLE 16 – NON-ASSIGNABILITY

16.1 The SHERIFF shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon written consent of the City Council, which consent must be evidenced by a duly passed resolution.

ARTICLE 17 – THIRD PARTIES

17.1 In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this Agreement arising from the performance of the obligation and responsibilities of the parties herein or for any other reason.

ARTICLE 18 – JOINT PREPARATION

18.1 The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.


ARTICLE 19 – ENTIRE AGREEMENT

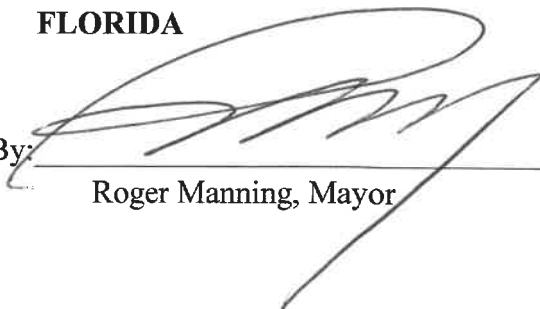
19.1 The parties acknowledge, one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

IN WITNESS WHEREOF, the parties hereto execute this instrument, at the time set forth below.

ATTEST:

CITY OF WESTLAKE,
FLORIDA

By: 
Sandra Demarco, City Clerk

By: 
Roger Manning, Mayor


Dated: 8/19/19

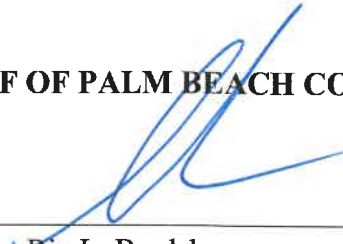
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: 
Pam E. Booker, City Attorney

ATTEST:

SHERIFF OF PALM BEACH COUNTY

By: 
Eric Coleman, Major

By: 
Ric L. Bradshaw

Dated: 8-21-19

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By:  #7028
Sheriff's Agency Attorney

EXHIBIT A

This Exhibit A was adopted as part of the Agreement effective October 01, 2019.

Palm Beach County Sheriff's Office Allocations	
Title	Quantity
Deputy Sheriff LE	5
TOTAL	5

The total of 5 Deputy Sheriffs covers 1 Deputy on duty 24 hours a day, 7 days per week.

As the City grows, future allocations will be provided through systematic tiered increases and will be mutually agreed upon.

THIRD ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT
SHERIFF RIC L. BRADSHAW AND CITY OF WESTLAKE

This Third Addendum to the Law Enforcement Service Agreement is made by and between the City of Westlake (hereinafter referred to as “Westlake”) located in Palm Beach County, and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida (hereinafter referred to as “Sheriff”). Westlake and the Sheriff shall hereinafter be referred to as the “Parties.”

WHEREAS, the Parties executed a Law Enforcement Service Agreement effective October 01, 2019, a First Addendum effective October 01, 2020, and a Second Addendum effective October 01, 2021, (the “Agreement”), by which the Sheriff agreed to perform law enforcement services; and

WHEREAS, the Parties wish to set forth the consideration for the Fourth Year of the Contract Term, October 01, 2022 through September 30, 2023.

NOW, THEREFORE, in consideration of the mutual covenants herein contained the receipt and sufficiency of which are hereby acknowledged, it is agreed upon as follows:

1. Article 5, Section 5.1 of the Law Enforcement Service Agreement is amended as to the total amount due for services for the period beginning October 01, 2022 through September 30, 2023 as follows: The total amount due for the annual period referenced above shall be \$669,500.00. Monthly payments shall be \$55,791.67. The last monthly payment shall be \$55,791.63.
2. Article 5, Section 5.3, regarding additional law enforcement services of the Law Enforcement Service Agreement is amended and shall now read as follows:

Additional law enforcement services as set forth in Article 2.1 (E) shall be compensated at a rate of \$100.00 per hour and will be billed by the SHERIFF to the CITY on a monthly basis. This rate is subject to annual review and change upon agreement between the CITY and SHERIFF. Alternatively, the CITY may opt to submit an application for an off-duty permit.

3. In all other respects and unless otherwise stated, the terms and conditions of the Agreement shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed the Addendum to this Agreement as of the last date all signatures below are affixed.

PALM BEACH COUNTY SHERIFF’S OFFICE

CITY OF WESTLAKE

BY: _____
Ric L. Bradshaw

BY: _____
JohnPaul O’Connor

Title: Sheriff

Title: Mayor

Witness: _____
Eric Coleman, Major

Witness: _____
Zoie P. Burgess, City Clerk

DATE: _____

DATE: _____

File Attachments for Item:

A. Palm Beach County Fire Rescue - Monthly Report: June

Submitted By: District Chief Phillip Olavarria

For Informational Purposes Only



7/6/2022

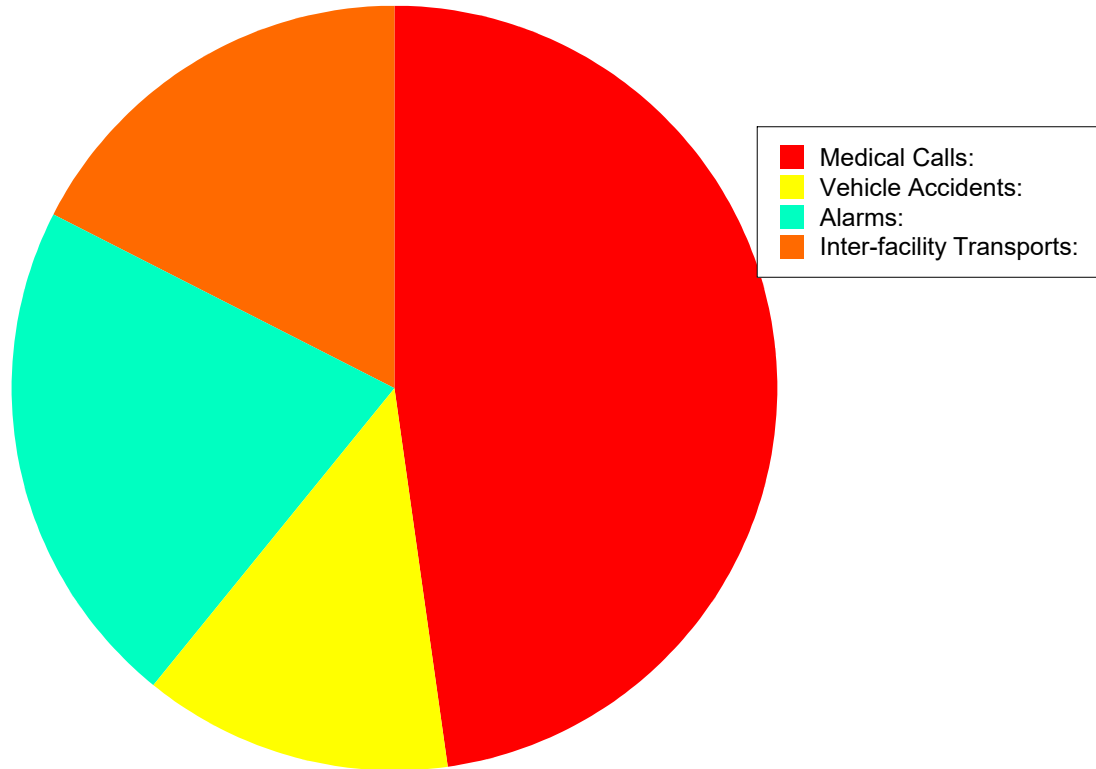
Palm Beach County Fire Rescue

Westlake - # of Calls by Type

20220601 to 20220630

<u>Type - Situation Dispatched</u>	<u># of Incidents</u>
Medical Calls:	11
Vehicle Accidents:	3
Alarms:	5
Inter-facility Transports:	4
Total number of Events:	23

Calls by Situation Dispatched





7/6/2022

Palm Beach County Fire Rescue

Westlake Response Time Report

20220601 to 20220630

Event #	Station	Sit Disp	Location of Event	Date	Received	Entered	Dispatch	Enroute	Oncene	Close	Disp Hand	Turnout	Travel	Resp Time*
Emergency Calls:														
F22104619	22	Medical	SWITCHGRASS LN WLK	06/02/2022	16:00:49	16:01:38	16:01:44	16:02:18	16:06:02	16:52:06	0:00:55	0:00:34	0:03:44	0:05:13
F22106060	22	Medical	SEMINOLE PRATT WHITNEY RD WLK	06/04/2022	16:43:31	16:43:48	16:43:56	16:44:39	16:47:16	17:21:46	0:00:25	0:00:43	0:02:37	0:03:45
F22106633	22	Medical	SEMINOLE PRATT WHITNEY RD WLK	06/05/2022	14:07:37	14:08:18	14:08:26	14:09:31	14:19:28	14:42:11	0:00:49	0:01:05	0:09:57	0:11:51
F22107315	22	Medical	PERSIMMON BLVD E/SEMINOLE PRATT WHITNEY RD	06/06/2022		15:00:15	15:00:21	15:01:04	15:03:17	16:08:34	0:00:31	0:00:43	0:02:13	0:03:27
F22107751	22	Medical	ORCHARD DR WLK	06/07/2022	08:33:16	08:33:44	08:33:51	08:34:12	08:38:32	08:44:11	0:00:35	0:00:21	0:04:20	0:05:16
F22111008	22	Medical	WHIPPOORWILL CIR WLK	06/12/2022	04:20:27	04:20:59	04:21:06	04:22:15	04:31:34	05:05:41	0:00:39	0:01:09	0:09:19	0:11:07
F22111382	22	Medical	WHIPPOORWILL CIR WLK	06/12/2022	18:05:16	18:05:40	18:05:54	18:06:36	18:10:26	18:36:09	0:00:38	0:00:42	0:03:50	0:05:10
F22111779	22	Medical	PERSIMMON BLVD E WLK	06/13/2022	10:34:24	10:34:41	10:35:08	10:35:19	10:38:10	10:58:54	0:00:44	0:00:11	0:02:51	0:03:46
F22114172	22	Medical	JASMINE LN WLK	06/16/2022	20:45:15	20:45:46	20:45:52	20:46:18	20:51:52	21:38:35	0:00:37	0:00:26	0:05:34	0:06:37
F22114675	22	Medical	SEMINOLE PRATT WHITNEY RD WLK	06/17/2022	16:14:31	16:14:59	16:15:09	16:15:39	16:18:29	16:34:01	0:00:38	0:00:30	0:02:50	0:03:58
F22117574	22	Medical	GOLDFINCH CIR WLK	06/22/2022		01:47:32	01:47:40	01:49:14	01:55:12	02:46:20	0:00:33	0:01:34	0:05:58	0:08:05
F22118469	22	Medical	TOWN CENTER PKWY N/KINGFISHER BLVD	06/23/2022		10:57:30	10:57:38	10:58:21	11:06:25	11:19:41	0:00:33	0:00:43	0:08:04	0:09:20
F22121193	22	Medical	SEMINOLE PRATT WHITNEY RD WLK	06/27/2022	14:01:21	14:01:39	14:01:48	14:01:57	14:03:56	14:46:15	0:00:27	0:00:09	0:01:59	0:02:35
Average Response Times:											0:00:37	0:00:41	0:04:52	0:06:10
Non Emergency Calls:														
F22108441	22	Medical	KEY BISCAYNE LN WLK	06/08/2022	08:26:30	08:26:59	08:27:05	08:28:47	08:35:08	08:44:07	0:00:35	0:01:42	0:06:21	0:08:38
F22109722	22	Medical	PERSIMMON BLVD E WLK	06/10/2022		04:37:26	04:37:35	04:39:00	04:42:01	05:27:46	0:00:34	0:01:25	0:03:01	0:05:00
F22113450	22	Fire Alarm	MELOGOLD DR WLK	06/15/2022		19:08:55	19:09:07	19:10:05	19:15:15	19:17:11	0:00:37	0:00:58	0:05:10	0:06:45
F22116156	22	Medical	PERSIMMON BLVD E WLK	06/19/2022	22:22:27	22:23:51	22:24:09	22:24:55	22:34:09	01:38:56	0:01:42	0:00:46	0:09:14	0:11:42
F22117678	22	Medical	PERSIMMON BLVD E WLK	06/22/2022	07:53:44	07:54:41	07:56:39	07:57:00	07:59:27	08:42:12	0:02:55	0:00:21	0:02:27	0:05:43
F22122321	22	Fire Alarm	LONGBOAT KEY DR WLK	06/29/2022		09:52:32	09:52:43	09:54:36	09:58:17	10:05:49	0:00:36	0:01:53	0:03:41	0:06:10



7/6/2022

Palm Beach County Fire Rescue

Westlake Response Time Report

20220601 to 20220630

Event #	Station	Sit Disp	Location of Event	Date	Received	Entered	Dispatch	Enroute	Oncene	Close	Disp Hand	Turnout	Travel	Resp Time*
Corrupt Data:														
F22103532	22	Medical	PERSIMMON BLVD E WLK	06/01/2022		05:16:05	05:16:17	05:16:27		06:02:00				Empty Time Fields
F22105252	22	Fire Alarm	ORCHARD DR WLK	06/03/2022		14:32:27	14:32:37	14:33:44		14:38:54				Empty Time Fields
F22118513	22	Fire Alarm	GOLDFINCH CIR WLK	06/23/2022		12:02:19	12:02:27	12:04:38		12:07:13				Empty Time Fields
F22119460	22	Fire Alarm	SANTA ROSA LN WLK	06/24/2022		20:02:01	20:02:08	20:02:54		20:04:36				Empty Time Fields

Total number of Events: 23

*Represents call received to arrival. If there is no received time, the County annual average call received to call entered time is used.