



Regular / Tentative Millage

Brevard County Board Of County Commissioners Governing Board Of The Brevard Mosquito Control District Governing Board Of The Barefoot Bay Water And Sewer District

2725 Judge Fran Jamieson Way

Viera, FL 32940

Agenda

Tuesday, July 21, 2020

If you wish to speak to any item on the agenda, please fill out a speaker card. Persons addressing the Board shall have three minutes to complete his/her comments on each public hearing agenda item for which he/she has filled out a card.

The Board of County Commissioners requests that speakers appearing under the Public Comment section of the agenda limit their comments and/or presentations to matters under the Board's jurisdiction. It is the responsibility of the Chair to determine the time limit on comments under Public Comment and other agenda items that are not Quasi-Judicial Public Hearings. In Quasi-Judicial proceedings, fifteen (15) minutes shall be allowed for applicants and five (5) minutes for other speakers.

- A. CALL TO ORDER 9:00 a.m.**
- B. MOMENT OF SILENCE**
- C. PLEDGE OF ALLEGIANCE: Commissioner Bryan Lober, District 2**
- D. MINUTES FOR APPROVAL: May 5, 2020 Regular**
- E. RESOLUTIONS, AWARDS AND PRESENTATIONS**
- F. CONSENT AGENDA (The entire Consent Agenda will be passed in one motion to include everything under Section F.)**

Development and Environmental Services Group

Natural Resources Management

- F.1** Brevard County Federal Shore Protection Project North Reach; Amendment to Memorandum of Agreement with Bureau of Ocean Energy Management and the U.S. Army Corps of Engineers to Use Outer Continental Shelf Sand for North Reach Project Renourishment.

Public Works Department

- F.2** Approval Re: Right-of-Way Use Agreement with The Viera Company for the Central Viera Planned Unit Development - District 4

- F.3** Approval Re: Dedication of Warranty Deed for Right of Way from Mahaffey Associates West Melbourne, LLC for the Carlton Multi-Family Development - District 3.
- F.4** Approval Re: Assignment and Assumption of Right of Way Use Agreement (Modern Duran District) to the Central Viera Community Association, Inc. - District 4
- F.5** Approval Re: Conveyance of Two Perpetual Easements and Two Resolutions from Brevard County to the Florida Department of Transportation (FDOT) for the Northerly Segment of St. Johns Heritage Parkway Project - District 5
- F.6** Approval Re: Assignment and Assumption of Right of Way Use Agreement (Viera Town Center) to the Viera Town Center Merchant's Association, Inc. - District 4
- F.7** Approval Re: Construction Contract Change Order No. 10 for the Intelligent Transportation System Phase 2 Construction for the St. Johns Heritage Parkway Northern Segment - District 5
- F.8** Approval Re: Amended and Restated Right-of-Way Use Agreement with the Grand Haven Master Homeowners Association, Inc. - District 4

Community Services Group

Parks and Recreation Department

- F.9** Approval; Re: Interlocal Agreement between the Brevard County Board of County Commissioners and the City of Cocoa for authorization to reimburse \$199,814 to the City of Cocoa, a portion of construction costs for the new Dr. Joe Lee Smith Community Center., District 2
- F.10** Approval, Re: Renewal of Leases with the Martin Andersen Senior Center, Inc. (District 2) and the Wickham Park Senior Center Association, Incorporated (District 4)

University of Florida; Brevard County Extension

- F.11** Approval, Re: Agreement with Feeding Florida, Fresh Access Bucks Program at the Brevard County Farmers Market held at Wickham Park.

Support Services Group

Budget

- F.12** FY2021 Proposed Budgets for Community Development Districts
- F.13** Approval of Budget Change Requests

Central Services

- F.14** Permission to Develop and Advertise a Solicitation for Brevard County Disclosure Counsel
- F.15** Permission to Amend Existing Integrated Supply Agreement, National Joint Purchasing Alliance (NJPA) Contract #061015-GPC for an Additional Year of Service
- F.16** BCC-26 Acquisition of Consultant Professional Services Revision

Human Resources

- F.17** 2021 RFP #P-1-20-11 Comprehensive Health Plan Services Contract Award Recommendations

Administrative Services Group

County Attorney

- F.18**
In re: National Prescription Opioid Litigation - Approval to file Individual Proof of Claim in Purdue Bankruptcy

Miscellaneous

- F.19** Appointments to Brevard Workforce Development, Inc. Board of Directors dba CareerSource Brevard

G. PUBLIC COMMENTS

H. PUBLIC HEARINGS

- H.1.** Petition to Vacate, Re: Public Utility Easement - 2049 Arnold Palmer Drive - "Eagle Point Subdivision" Plat Book 52, Page 37 - Titusville - Wineland Family Trust - District 1
- H.2.** Petition to Vacate, Re: Public Utility & Drainage Easement - 843 Heron Road - "Poinsett Shores Second Addition" Plat Book 19, Page 143 - Cocoa - Mira E. Chapman - District 1
- H.3.** An Ordinance Rescinding Selected Companies' Economic Development Ad Valorem Tax Exemption
- H.4.** Adoption of Proposed FY 2020-2021 Ad Valorem Millages

I. UNFINISHED BUSINESS

J. NEW BUSINESS

Development and Environmental Services Group

- J.1** Approval Re: Contract for Sale and Purchase from Owners Jennifer Grant, Max Brandes and Teresa Paiva for the Lift Station F02 Reconstruction Project- District 2.

Community Services Group

- J.2** Staff Direction, Re: Tourism Development Council's Recommendation to Place a 12-Month Hold On Indian River Lagoon Grant Program and Lori Wilson Park Project Until End of Fiscal Year 2020-2021.

Miscellaneous

- J.3**
Legislative Intent and Permission to Advertise an Amendment to Section 74-102, Brevard County Code of Ordinances

Add Ons

- J.4** Banana Riverfront, LLC

K. PUBLIC COMMENTS

L. BOARD REPORTS

- L.1. Frank Abbate, County Manager
L.2. Eden Bentley, County Attorney
L.3. Rita Pritchett, Commissioner District 1, Vice Chair
L.4. Bryan Lober, Commissioner District 2, Chair
L.5. John Tobia, Commissioner District 3
L.6. Curt Smith, Commissioner District 4
L.7. Kristine Isnardi, Commissioner District 5

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the County Manager's Office no later than 48 hours prior to the meeting at (321) 633-2010.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the County Commission is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>

In accordance with Resolution 2014-219 Section VIII (8.1) the agenda shall provide a section for public comment limited to thirty (30) minutes following approval of the consent agenda during each regular County Commission meeting. The purpose of public comment is to allow individuals to comment on any topic relating to County business which is not on the meeting agenda. Individuals delivering public comment shall be restricted to a three-minute time limit on their presentation. During this thirty (30) minute segment of public comment, speakers will be heard in the order in which they turned in a speaker card asking to be heard. Any speaker not heard during the first thirty (30) minute segment will be heard during a second public comment segment held at the conclusion of business specified on the regular Commission agenda. With the exception of emergency items, the Board will take no action under the Public Comment section, but can refer the matter to another meeting agenda.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1

7/21/2020

Subject:

Brevard County Federal Shore Protection Project North Reach; Amendment to Memorandum of Agreement with Bureau of Ocean Energy Management and the U.S. Army Corps of Engineers to Use Outer Continental Shelf Sand for North Reach Project Renourishment.

Fiscal Impact:

No direct fiscal impact, but failure to execute agreement may result in loss of \$11 million in federal funding dedicated for the project.

Dept/Office:

Natural Resources Management Office

Requested Action:

It is requested the Board authorize the Chair to execute an amendment to BOEM Negotiated Agreement No. OCS-A-0526, substantially in the form of the attached draft, subject to County Attorney and Risk Management Approval.

Summary Explanation and Background:

On July 9, 2019 the Board approved execution of a Memorandum of Agreement with Bureau of Ocean Energy Management (BOEM) and the U.S. Army Corps of Engineers to Use Outer Continental Shelf Sand for beach nourishment within the Brevard County South Reach and Mid Reach (executed copy attached). Since that time the U.S. Army Corps of Engineers (Corps) has secured approximately \$11 million in federal funding to renourish the North Reach, paying 100% of the construction cost. The Corps seeks to bid this work in August 2020, so that a contract can be awarded this fiscal year and construction can be completed by May 1, 2021.

The BOEM agreement executed in 2019 did not include sand placement in the North Reach. An amendment to that agreement has been prepared by BOEM that allows up to 720,000 cubic yards of sand to be placed in the North Reach. A draft copy of this proposed amendment is attached but is still in review by staff at BOEM, the Corps, and Brevard County.

The US Army Corps seeks to have this amendment executed prior to August 1 in order to avoid delaying advertisement of the North Reach project. Delay of advertisement and subsequent failure of the Corps to award a contract by September 30th could cause loss of the \$11 million in federal funding dedicated to the project this fiscal year.

Clerk to the Board Instructions:

Final documents will be provided for execution as soon as available.

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND THE
CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE MID AND SOUTH REACHES OF THE BREVARD
COUNTY, FLORIDA SHORE PROTECTION PROJECT IN BREVARD COUNTY, FLORIDA**

BOEM Negotiated Agreement No. OCS-A 0526

Title I. Explanatory Recitals

- A.** Pursuant to the authority and in accordance with Section 101(b)(7) of the Water Resources Development Act of 1996 (P.L. 104-303) as amended by Section 3045(a) of the Water Resources Development Act of 2007 (P.L. 110-114), the Department of the Army, acting through the United States Army Corps of Engineers, Jacksonville District (USACE), with the cooperation of Brevard County, Florida (the “County”), is endeavoring to conduct the initial nourishment of the Mid-Reach segment and periodic renourishment of the beach along South-Reach segment of the Brevard County, Florida Shore Protection Project shoreline. USACE will also be conducting a periodic renourishment of the Patrick Air Force Base segment of the Brevard County shoreline on behalf of the 45th Space Wing, in association with this construction event, under a separate Memorandum of Agreement.
- B.** USACE and the County have undertaken the Brevard County, Florida Shore Protection Project, in furtherance of the aforementioned goal (herein referred to as the “Project”).
- C.** Prior to award of the contract for Project construction, the County and USACE will have procured lands, easements, and rights-of-way (collectively, “Land Rights”) as necessary from upland landowners, other property rights holders, public entities, and other persons and entities of appropriate scope and duration to facilitate the Project.
- D.** USACE, which is acting as the project manager for the Project, now seeks to obtain sand in a manner that minimizes costs and leverages Federal resources.

Title II. Purpose and Authority

- A.** The Department of the Interior (DOI), acting through the Bureau of Ocean Energy Management (BOEM), enters into this Memorandum of Agreement (MOA) with the County and USACE (collectively with DOI or BOEM, the “Parties”) providing for the use of up to 1,300,000 cubic yards of Outer Continental Shelf sand resources (“OCS sand resources”) for the Project under the authority of Section 8(k)(2) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1337(k)(2)). The term “OCS sand resources” means the sediment deposits found on or below the

surface of the seabed on the Outer Continental Shelf (OCS), as defined in Section 2(a) of the OCSLA (43 U.S.C. § 1331(a)). This total of 1,300,000 cubic yards includes 500,000 cubic yards for the Mid-Reach segment and 800,000 cubic yards for the South-Reach segment. It does not include 600,000 cubic yards for the Patrick Air Force Base segment, for which USACE anticipates executing a separate agreement. This MOA authorizes the Canaveral Shoals II Borrow Area (hereinafter called the CSII Borrow Area), as designated and delineated in Table 1 and on the attached maps (**Attachment 1**), in accordance with the terms of this MOA. After removal of the sand resources from the OCS and placement of those resources as specified in this MOA, BOEM has no jurisdiction over those sand resources unless they return to the OCS.

Table 1. CSII Borrow Area Coordinates

Point	Latitude	Longitude	Easting	Northing
1	28.418717	80.448451	833,454.9	1,485,342.9
3	28.411554	80.431310	838,976.9	1,482,764.3
5	28.392439	80.439102	836,504.3	1,475,802.4
7	28.396557	80.452666	832,136.4	1,477,279.8
8	28.403957	80.458609	830,213.8	1,479,961.6
10	28.415809	80.454180	831,618.0	1,484,277.4

Note: Longitude and Latitude in Geographic Coordinate System NAD 1983. Easting and Northing in Florida State Plane Coordinate System (ft) NAD 1983

B. BOEM, under the authority delegated by the Secretary of the Interior, is authorized, pursuant to Section 8(k)(2) of the OCSLA (43 U.S.C. § 1337(k)(2)) to enter into this MOA concerning the potential use of OCS sand resources.

BOEM has determined that the Project meets the requirements of Section 8(k)(2)(A)(i) of the OCSLA. Therefore, in accordance with Section 8(k)(2), and subject to the terms and conditions contained herein, BOEM hereby authorizes the use of OCS sand resources from the CSII Borrow Area identified in Table 1 for the construction undertaken in furtherance of the Project. The Parties acknowledge that under the terms of Section 8(k)(2)(B), BOEM will not assess any fee against the County or USACE for the use of the OCS sand resources described herein.

Nothing in this MOA is intended to abrogate or diminish the Secretary of the Interior's authority under the OCSLA to oversee and regulate the removal of OCS sand resources.

C. USACE enters into this MOA in compliance with requirements of Sections 8(k)(2)(A)(i) and 8(k)(2)(D) of the OCSLA. The County, along with USACE, enters into this MOA in compliance with the requirements of Section 8(k)(2)(A)(i) of the OCSLA.

Nothing in this MOA is intended to impede or hinder the County's or USACE's ability to complete the Project or abrogate or diminish either Parties' authority or responsibilities under applicable law, including but not limited to the Clean Water Act (CWA) (33 U.S.C §§ 1251 *et seq.*), Water Resources Development Act of 1996 (P.L. 104-303, §101(b)); National Environmental Policy Act (NEPA) (42 U.S.C. §4321 *et seq.*), Endangered Species Act (ESA) (16 U.S.C. §1531 *et. seq.*), Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §801 *et. seq.*), Marine Mammal Protection Act (MMPA) (16 U.S.C. §1361 *et. seq.*), National Historic Preservation Act (NHPA) (54

U.S.C. §300101 *et. seq.*), Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§703-712), or the Coastal Zone Management Act (CZMA) (16 U.S.C. §1451 *et. seq.*).

Title III. Description of the Authorized Activity

This MOA is intended to facilitate construction of the Brevard County, Florida Shore Protection Project along the Mid and South-Reach shorelines. This MOA authorizes the USACE to extract up to 1,300,000 cubic yards of OCS sand resources to nourish the Mid-Reach and re-nourish the South-Reach segments of the Brevard County shoreline. The OCS sand resources must be extracted from the CSII Borrow Area (see **Attachment 1**).

Title IV. Provisions

A. BOEM authorizes the use of OCS sand resources from the CSII Borrow Area for the Project. The USACE or its contractor(s) may only extract, transport, and place such OCS sand resources from the borrow area in accordance with the terms and conditions set forth below and in **Attachment 2**. Except as provided above, the Parties agree that all other aspects of the Project's execution and completion remain as described in the Project Cooperation Agreement between the Department of the Army and Brevard County, Florida, for Construction of the Brevard County, Florida Shore Protection Project, entered into on 20th of April 2000, and any subsequent amendments thereto and the Project Partnership Agreement between the Department of the Army and Brevard County, Florida, for Construction of the Brevard County, Florida Shore Protection Project, Mid-Reach Segment entered into on 31st of August 2016.

B. All written notifications, requests, submissions, and deliverables, unless otherwise stated, should be sent to BOEM at:

Chief, Marine Minerals Division
Attention: Jeffrey Reidenauer, Ph.D.
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-LD
Sterling, Virginia 20166

All electronic notifications, submissions, and deliverables to BOEM should be sent to dredgeinfo@boem.gov.

All written notifications, requests, submissions, and deliverables to the USACE should be sent to:

Jacksonville District
U.S. Army Corps of Engineers
Attn: Shelley Trulock, Project Manager
701 San Marco Boulevard
Jacksonville, FL 32207

All written notifications, requests, submissions, and deliverables to Brevard County should be sent to:

Attn: Mr. Michael McGarry
Beach Management Coordinator
Brevard County, Natural Resource Management Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940-6605

C. This MOA applies only to the extraction, transportation, and placement of OCS sand resources as described above. This MOA will terminate or expire (1) upon USACE sending written notice that it has obtained sufficient OCS sand resources to complete the Project, up to 1,300,000 cubic yards, or (2) three years from the date of execution of this MOA, whichever occurs first. Upon request by USACE, the Parties may agree to extend the terms of this MOA as necessary to provide USACE and its contractor(s) with additional time to complete the Project. The Parties acknowledge that there may be a need for future OCS sand resources for periodic maintenance, augmentation or construction purposes. BOEM, USACE, and the County may enter into subsequent agreements, for the use of additional OCS sand resources for the Project, consistent with each Party's responsibilities under applicable law.

D. BOEM, USACE, and the County recognize that planning and coordination among the Parties will ensure that responsibilities related to OCSLA, other applicable Federal laws, and this Congressionally-authorized Project are carried out and accommodated in an efficient and timely manner so that the Project schedule will not be unnecessarily delayed or compromised. All Parties recognize that BOEM, as a Bureau in the DOI, has certain responsibilities for the orderly, timely, and efficient recovery of OCS minerals using the best available technology while ensuring environmental stewardship and compliance. Moreover, the Parties further recognize that USACE has certain stewardship and environmental compliance responsibilities that are separate and distinct from the responsibilities of BOEM. To these ends, and with respect to the Project, BOEM, USACE, and the County agree to the following terms:

1. Plans and Performance Requirements

The USACE will include this MOA as a reference document in the advertised "Construction Solicitation and Specifications Plan" (hereinafter referred to as the "Plan"). The USACE will ensure that all operations at the CSII Borrow Area are conducted in accordance with the final approved Plan and all terms and conditions in this MOA, as well as all applicable statutes, regulations, orders and any guidelines or directives specified or referenced herein. The USACE will send BOEM a copy of the Plan and any modification to the Plan, when publically available.

The dredging method for removing sand from the CSII Borrow Area will be consistent with those evaluated in all applicable NEPA documents and approved in the authorizing documents, as well as project permits. The USACE will allow BOEM to review and comment on modifications to the Plan that may affect the borrow area or pipeline corridors on the OCS, including the use of submerged or floated pipelines to directly convey sediment from the borrow area to the placement site. BOEM will deliver these comments in a timely fashion so as to not unnecessarily delay the USACE's construction contract or schedule.

If dredging and/or conveyance methods are not wholly consistent with those evaluated in relevant NEPA documents prepared by BOEM for this Project, those included in the environmental and cultural resource consultations, and those authorized by relevant project permits, additional environmental review may be necessary. If the additional NEPA, consultations, or permit modifications would impact or otherwise supplement the provisions of the MOA, an amendment may be required.

The USACE will notify BOEM electronically at least 72 hours prior to the commencement, and within 24 hours after termination, of operations at the CSII Borrow Area. BOEM will electronically notify the USACE in a timely manner of any OCS activity within the jurisdiction of the DOI that may adversely affect the USACE's ability to use OCS sand resources for the Project.

Prior to the commencement of construction, the USACE will electronically provide BOEM with a summary of the construction schedule consistent with Paragraph 15 of this MOA. The USACE, at the reasonable request of BOEM or the Bureau of Safety and Environmental Enforcement (BSEE), will allow any authorized Federal inspector to access the site of any operation, when permitted by safety regulations, and will provide BOEM or BSEE any documents and records that are pertinent to occupational or public health, safety, environmental protection, conservation of natural resources, or other use of the OCS as may be requested.

The USACE and the County may combine submittals, notifications, and reports associated with this MOA with those associated with the OCS-A 0527 MOA entitled, "Regarding the Use of Outer Continental Shelf Sand Resources for Construction of the Patrick Air Force Base Reach of the Brevard County Shore Protection Project in Brevard County, Florida."

2. Environmental Responsibilities and Environmental Compliance

The USACE is the lead agency on behalf of the Federal Government to ensure the Project complies with applicable environmental laws, including but not limited to the CWA, ESA, MSA, NHPA, and CZMA, and any consultations or limitations imposed thereunder. The USACE will serve as the lead Federal agency for ESA Section 7 consultation concerning protected species under the purview of the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The USACE will instruct its contractor(s) to implement the mitigation terms, conditions, and measures required by the USFWS, NMFS, Florida Department of Environmental Protection (FDEP), and BOEM pursuant to applicable Federal and State laws and regulations prior to commencement of activities authorized under this MOA, including extraction, transportation and placement of sand resources from the CSII Borrow Area (**Attachment 2**). Electronic copies of all relevant correspondence, monitoring data, and reports related to the activities covered by this MOA will be provided electronically to BOEM within 14 days of issuance (including, but not limited to, observer and dredging reports, and reports required by relevant project permits) unless the reports are required sooner by this MOA or applicable law, the permits, or the consultations. Construction may not commence until the pre-construction requirements have been completed.

3. Pre-Construction Notification of Activity in or near the Borrow Area

The USACE will invite BOEM to attend a pre-construction meeting that describes the USACE's and/or its contractor's or agent's plan and schedule to construct the Project.

4. Dredge Positioning

During all phases of the Project, the USACE will ensure that the dredge and any bottom-disturbing equipment is outfitted with an onboard global positioning system (GPS) capable of maintaining and recording location within an accuracy range of no more than plus or minus 3 meters. The GPS needs to be installed as close to the hydraulic dredge as is practicable or needs to use appropriate instrumentation to accurately represent the position of the hydraulic dredge. During dredging operations, the USACE will immediately notify BOEM electronically if dredging occurs outside of the approved borrow area. Such notification will be made as soon as possible after the time USACE becomes aware of dredging outside of the approved borrow area.

Anchoring, spudding, or other bottom disturbing activities are not authorized outside of the approved borrow area on the OCS, unless there are immediate concerns of safety, navigation risks or emergency situations.

The USACE will coordinate with the National Dredging Quality Management (DQM) program in advance of construction commencement to provide appropriate project specific information, inform them of BOEM's role in the project and relevant MOA stipulations, and develop a coordination plan to ensure that all DQM related deliverables in accordance with this MOA are internally reviewed and delivered to BOEM on time and in accordance with BOEM formatting requirements. The USACE will provide BOEM, electronically, with all appropriate Dredging Quality Management (DQM) data acquired during the Project using procedures jointly developed by the USACE's National Dredging Quality Management (DQM) Data Program Support Center and BOEM. The USACE will submit the DQM data, including draghead, cutterhead, or other hydraulic or mechanical dredging device depth every two weeks. If available, the USACE will also submit Automatic Identification System (AIS) data for vessels qualifying under the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea.

5. Dredge Operation

Dredging will occur preferentially in naturally accreting areas of the shoal complex, avoiding erosional areas of the shoal to the extent possible, and will avoid creating deep depressions or pits.

The final, approved Plan (required pursuant to Paragraph 1) will include provisions designed to maximize the removal of sand from each sub-area of each provided borrow area. The purpose of these provisions is to avoid "wasting" sediment that could be used to renourish the beach now and in the future.

6. Submittal of Production and Volume Information

The USACE, in cooperation with the dredge operator, will submit to BOEM a summary of the dredge track lines, outlining any deviations from the Plan every two weeks. This will include a color-coded plot of the draghead, cutterhead, or other hydraulic or mechanical dredging device, showing any horizontal or vertical dredge violations. The dredge track lines must show dredge status: hoteling, dredging, transiting, or unloading. This map will be in PDF format.

At least every two weeks, the USACE will electronically provide a report of the construction progress including estimated volumetric production rates to BOEM. The USACE's project completion report, as described below, will also include production and volume information, including Daily Operational Reports.

7. Local Notice to Mariners

The USACE will require its contractor(s) for the Project to place a notice in the U.S. Coast Guard Local Notice to Mariners regarding the timeframe and location of dredging and construction operations in advance of commencement of dredging.

8. Marine Pollution Control and Contingency Plan

The USACE will require its contractor(s) and subcontractor(s) to prepare for and take all necessary precautions to prevent discharges of oil and releases of waste or hazardous materials that may impair water quality. In the event of such an occurrence, notification and response will be in accordance with applicable requirements of 40 C.F.R. Part 300. All dredging and support operations under this MOA will be compliant with U.S. Coast Guard regulations and the U.S. Environmental Protection Agency's Vessel General Permit, as applicable. The USACE will notify BOEM of any noncompliant discharges and remedial actions taken, and will provide copies of reports of the incident and resultant actions electronically.

9. Encounter of Ordnance

If USACE or its contractors encounter any ordnance while conducting dredging activities at CSII Borrow Area, it will report the discovery within 24 hours to Dr. Jeff Reidenauer, Chief, BOEM Marine Minerals Division, at (703) 787-1851 and dredgeinfo@boem.gov.

10. Bathymetric Surveys

The USACE will provide BOEM with pre- and post-dredging bathymetric surveys of the Borrow Area. The USACE or its contractor will conduct a pre-dredging survey of the Borrow Area within 60 days prior to the commencement of dredging and will provide the data to BOEM for review via dredgeinfo@boem.gov, allowing for a minimum of 7 working days for BOEM to provide concurrence before the USACE or its contractor commences dredging. A qualified hydrographic surveyor, independent from the dredging/construction contractor, needs to conduct and oversee the survey, and must approve the survey results before transmitting them to BOEM. The USACE or its contractor will conduct post-dredging survey of the Borrow Area within 60 days after the completion of dredging. Given available funding, BOEM recommends that the USACE conduct additional bathymetric surveys of the Borrow Area one (1) and three (3) years after the completion of dredging to document borrow area evolution and provide information to inform future decisions and consultations regarding the use of OCS sand resources. The USACE or its contractor will perform surveys, error analysis, and reporting in accordance with the most recent edition of the National Oceanic and Atmospheric Administration's (NOAA's) Office of Coast Survey Hydrographic Survey Field Procedure Manual. Survey standards and requirements are specified and can be found on the Coast Survey Document Library (<https://www.nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/hssd-2017.pdf>).

For bathymetric surveys, one hundred percent coverage using multi-beam bathymetric survey methods is required. All bathymetric data will be roll, pitch, heave, and tide corrected using best practices. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor. Survey lines of the specific dredge area will be established at intervals necessary to provide 100 percent coverage. All survey lines will extend at least 100 meters (328 feet) beyond the edge of the Borrow Area limits as defined in this MOA.

The USACE or its contractor will collect all data in such a manner that post-dredging bathymetric surveys are compatible with the pre-dredging bathymetric survey data to enable the latter to be subtracted from the former to calculate the volume of sand removed, the shape of the excavation, and the nature of post-dredging bathymetric change. Pre-dredge bathymetric survey transects will be reoccupied during the post-dredging surveys. The USACE or its contractor will conduct surveys using kinematic GPS referenced to a GPS base station occupying an established (NAVD 88 vertical control) monument within 15 kilometers (9 miles) of the survey area, a National Geodetic Survey real-time network, or a water-level gauge deployed within the vicinity of the Borrow Area and referenced to an established monument (NAVD 88 vertical control), unless alternative methods are approved by BOEM. Pre- and post-dredging surveys will be referenced to the same water-level gauge, tide gauge, real-time network, benchmark, or BOEM-approved method. An uncertainty or error analysis will be conducted on the bathymetric dataset based on calculated differences of measured elevations (depths) at all transect crossings (also note that other best practices typically employed to identify potential error or quantify uncertainty, such as daily bar-checks, will be conducted and documented). The USACE or its contractor will submit a methods section and results of the uncertainty analysis, field notes, and metadata to BOEM with the processed bathymetric data products.

If data accuracy, coverage, quality, or other parameters for either pre- or post-dredging surveys are not sufficient to provide for accurate comparisons between the pre-dredge and post-dredge surveys (e.g., do not meet specifications and standards discussed or referenced above), BOEM may require USACE or its contractor to conduct a new survey (at the pre-dredge and/or post-dredge phase).

The delivery format for bathymetry data submission is an ASCII file containing x, y, z data and a digital elevation model in a format agreed upon between BOEM and USACE in writing. The horizontal data will be provided in the NAD 83 Florida State Plane East, U.S. survey feet. Vertical data will be provided in the NAVD 88, U.S. survey feet unless otherwise specified. An 8.5 x 11 inch plan view plot of the pre- and post-construction data will be provided showing the survey vessel navigation tracks, as well as contour lines at appropriate elevation intervals. A plot of the digital elevation model will also be provided. These plots will be provided in Adobe PDF format. Images and descriptions of side scan sonar or bathymetric anomaly targets will be included and identified on an index map.

11. Archaeological Resources

Onshore Prehistoric or Historic Resources

If the USACE discovers any previously unknown historic or archeological resources while accomplishing the activity on Brevard County beaches, the USACE will notify BOEM of any

finding. The USACE will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

Nearshore Prehistoric or Historic Resources

The USACE or its contractor must maintain avoidance buffers around three targets in the nearshore area within the vicinity of the pump-out location for the Mid-Reach stockpile area that will be located at Spessard Holland Park. See **Table 2** for target location and avoidance buffers.

Table 2. Anomalies to be avoided During Dredge Pump-out Operations

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Minimum Avoidance Radius (ft)	Note
USACE-003	Nearshore pumpout	801516/ 1353423	250	Cultural Resource
USACE-004	Nearshore pumpout	801063/ 1353396	175	Cultural Resource
USACE-005 (M02)	Nearshore pumpout	804128/ 1355184	150	Cultural Resource

Offshore Prehistoric or Historic Resources

The USACE or its contractor must avoid the following anomalies (listed in **Table 3**) during dredging operations by a radius of at least 300 feet around the target coordinates:

Table 3. Anomalies to be avoided During Dredging Operations

Target	Area/Block	Amplitude (gammas)	Duration (ft)	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Minimum Avoidance Radius (ft)	Note
USACE - 006 (M35)	Canaveral Shoals II	51	125	836039/1482530	300	Cultural Resource
USACE - 007 (M47)	Canaveral Shoals II	61	165	837485/1480862	300	Cultural Resource
USACE - 008 (M57)	Canaveral Shoals II	147	140	831766/1482563	300	Cultural Resource
USACE - 009 (M61)	Canaveral Shoals II	52	100	832730/1481664	300	Cultural Resource
USACE - 0010 (C2-C13)	Canaveral Shoals II	36	110	837259/ 1480480	300	Cultural Resource

The following targets (listed in **Table 4**) are acoustic receivers, which are operational instruments used in a BOEM scientific study. These receivers are co-located with the above listed cultural resource targets and do not require additional avoidance measures. BOEM provides these coordinates for situational awareness.

Table 4. Acoustic Receivers Present in CSII Borrow Area

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Note
DRE 1	Canaveral Shoals II	836097/1482615	Acoustic Receiver
DRE 2	Canaveral Shoals II	837220/1480453	Acoustic Receiver
DRE 10	Canaveral Shoals II	831729/1482569	Acoustic Receiver
DRE 11	Canaveral Shoals II	832825/1481734	Acoustic Receiver

In the event that the Parties and/or dredge operators discover any archaeological resources prior to dredging operations in the CSII Borrow Area or in the vicinity of pump-out operations, the USACE will report the discovery to the Marine Minerals Division Chief at BOEM, electronically, in a timely manner. The USACE Planning Division will coordinate with BOEM on the measures needed to evaluate, avoid, protect, and, if needed, mitigate adverse impacts from an unanticipated discovery. If investigations determine that the resource is significant, the Parties will together determine how best to protect it.

If the Parties and/or dredge operators discover any archaeological resources while conducting dredging operations, the USACE will require that dredge and/or pump-out operations be halted immediately and avoid the resource per the requirements of the USACE specifications for unanticipated finds. The USACE will then immediately report the discovery electronically to the Marine Minerals Division Chief at BOEM. The USACE will coordinate with BOEM on the measures needed to evaluate, avoid, protect, and, if needed, mitigate adverse impacts from an unanticipated discovery. If investigations determine that the resource is significant, the Parties will together determine the necessary further action required and how to best protect the resource.

12. Responsibilities

BOEM does not warrant that the OCS sand resources used in this Project are suitable for the purpose for which they are intended by the USACE and the County. BOEM's responsibility under this Project is limited to the authorization of access to OCS sand resources from the CSII Borrow Area as described in this MOA, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken by the other Parties in pursuit of the Project.

13. Project Completion Report

Consistent with Paragraph 15, the USACE will submit a project completion report to BOEM within 120 days following completion of the activities authorized under this MOA. The USACE should send this report and supporting materials electronically. The report will contain, at a minimum, the following information:

- the names and titles of the project managers overseeing the effort (for the USACE, the engineering firm (if applicable), and the contractor), including contact information (phone numbers, mailing addresses, and email addresses);
- a narrative including the location and description of the Project, the final, as-built features, boundaries, and acreage, including the restored beach width and length;
- the final total volume of material extracted from the borrow area and the volume of material actually placed on the beach or shoreline (including a description of the volume calculation method used to determine these volumes);
- notation that USACE has confirmed that BOEM has received the full set of DQM data, in ASCII files, containing the x, y, z coordinates and time stamp of the cutterhead or drag arm locations;
- a narrative discussing the construction sequences and activities, and, if applicable, any problems encountered and solutions implemented;
- a list and description of any construction change orders issued, if applicable;
- a table showing the various phases of the Project construction, the types of construction equipment used, the nature of their use;
- a list and description of any safety-related issues or accidents reported during the life of the project;
- a narrative and any appropriate tables describing any environmental surveys or efforts associated with the Project;
- a table listing significant construction dates beginning with bid opening and ending with final acceptance of the Project by the USACE;
- digital appendices containing the as-built surveys, beach-fill cross-sections, and survey data;
- metadata appropriate to electronic deliverables; and
- any additional pertinent comments.

14. Reporting Compliance

The USACE will designate in advance of construction a single point of contact (and preferably a back-up contact), who is responsible for facilitation of compliance with all MOA requirements. The USACE will provide this contact information to BOEM, electronically, at least 30 days in advance of dredging and construction operations.

The Parties will attempt to reasonably comply with the provisions of this MOA. Should there be an allegation of a failure to comply, the alleged failure will be corrected as soon as possible and/or

resolved jointly among BOEM, USACE and the County, including through the dispute resolution process identified in Paragraph 16.

15. Sharing of Information

Consistent with the purpose stipulated by the Parties in Title II, and to the extent allowed by law, policy and regulation, the USACE, the County, and BOEM agree to: (1) share all information needed for or generated from the Project, including the sharing of implementation and other applicable schedules; (2) provide such information to the requesting agency as expeditiously as possible; and (3) work to ensure that all required completion report information is received.

The Parties to this MOA acknowledge that information and reports required by and/or exchanged pursuant to the subject Project may include confidential business information, proprietary information, or other sensitive information that should be protected from disclosure.

Any Party, contractor or agent of one of the Parties requesting that information or reports provided pursuant to this MOA be treated as confidential, will prominently mark the information and report as “Confidential” along with the basis for the claim of confidentiality. Any cover correspondence submitted with the information or report will likewise note the claim of confidentiality. To the extent practicable, a Party to this MOA may only request information that has been marked as “Confidential” and is in the possession of another Party to this MOA if the information is needed by the requesting Party to carry out their obligations under this MOA or if the information is necessary for the requesting Party to fulfill their obligations under the law. The Party in possession of the information requested may work with the requesting party to determine if the information may be shared without waiving the confidential nature of the material.

The Parties further agree that they will notify the other Parties as soon as possible, in writing, of any request by any person seeking the release or disclosure of information marked “Confidential” in whole or in part, including, but not limited to, requests pursuant to Court orders, discovery, subpoenas, or other compulsory process, or public access request under applicable Federal or State law. Notification will be considered timely if it provides the Parties or individuals claiming the information or report is confidential a reasonable opportunity to seek a Court order to prevent release or disclosure. Any disputes regarding requests for information or the confidential nature of the information requested will be resolved according to applicable law and through the dispute resolution process identified in Paragraph 16. If the Party or individual claiming the information or report is confidential fails to obtain a timely Court order preventing the release or disclosure of the information, the Party in possession of the information will release it to the extent required by applicable law.

16. Resolution of Disputes

The Parties agree to make every attempt to settle any disputes regarding this MOA at the lowest operational level. In the case of a (1) substantial disagreement between BOEM and USACE or between BOEM and the County with respect to any aspect of BOEM’s authorization of the use of OCS sand resources in accordance with the terms and conditions as specified or (2) any alleged breach by a Party of the terms and conditions as specified herein, the undersigned will designate a senior management official in their respective agencies to state the area(s) of disagreement or

alleged breach in writing and present such statement to the other Parties for consideration. If resolution is not reached within 60 days, the undersigned may request the active participation of the District Commander, Jacksonville District of the USACE, the Chief of the Office of Strategic Resources of BOEM, and the County Administrator or designee for Brevard County.

17. Miscellaneous

This MOA will not affect any pre-existing or independent relationships or obligations among DOI, USACE, and the County, including any other relationships or obligations between BOEM and USACE, or any other units of such Departments.

All rights in the CSII Borrow Area not expressly granted to USACE and the County are hereby reserved to BOEM. BOEM reserves the right to authorize other uses in the CSII Borrow Area that will not unreasonably interfere with activities authorized under this MOA. BOEM will allow USACE and the County to review and comment on any proposed authorizations for the use of OCS sand resources in the CSII Borrow Area while this MOA is in effect.

Nothing herein is intended to conflict with current USACE, County, or BOEM statutes or regulations. If the terms of this MOA are inconsistent with existing statutes or regulations of any of the Parties entering into this MOA, then those portions of this agreement which are determined to be inconsistent will be invalid, but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect. At the first opportunity for review of the MOA after such inconsistency is identified, all necessary changes will be accomplished either by an amendment to this MOA or by entering into a new MOA, whichever is deemed expedient to the interest of the Parties.

This agreement may be executed in two (2) or more counterparts, each of which will be deemed an original. The signatures to this agreement may be executed on separate pages, and when attached to this agreement will constitute one complete document.

[This rest of this page was intentionally left blank. Signature Pages to follow.]

**MEMORANDUM OF AGREEMENT
AMONG
THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND THE
CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE MID AND SOUTH-REACHES OF THE BREVARD COUNTY
SHORE PROTECTION PROJECT IN BREVARD COUNTY, FLORIDA**

BOEM Negotiated Agreement No. OCS-A 0526

Signatory Page

L. Renee Orr
Chief, Strategic Resources Office
Bureau of Ocean Energy Management
Department of the Interior

Andrew D. Kelly
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: 8/28/19

Brevard County Board Of County Commissioners
By:

Kristine Isnardi, Chair

As approved by the Board on: _____

Attest: _____
Scott Ellis, Clerk

Reviewed for legal form and content by:


Christine Valliere, Assistant County Attorney

**MEMORANDUM OF AGREEMENT
AMONG
THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
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BOEM Negotiated Agreement No. OCS-A 0526

Signatory Page


for L. Renee Orr
Chief, Strategic Resources Office
Bureau of Ocean Energy Management
Department of the Interior

Date: 8/29/2019

Andrew D. Kelly
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Brevard County Board Of County Commissioners
By:


Kristine Isnardi, Chair

As approved by the Board on: July 9, 2019

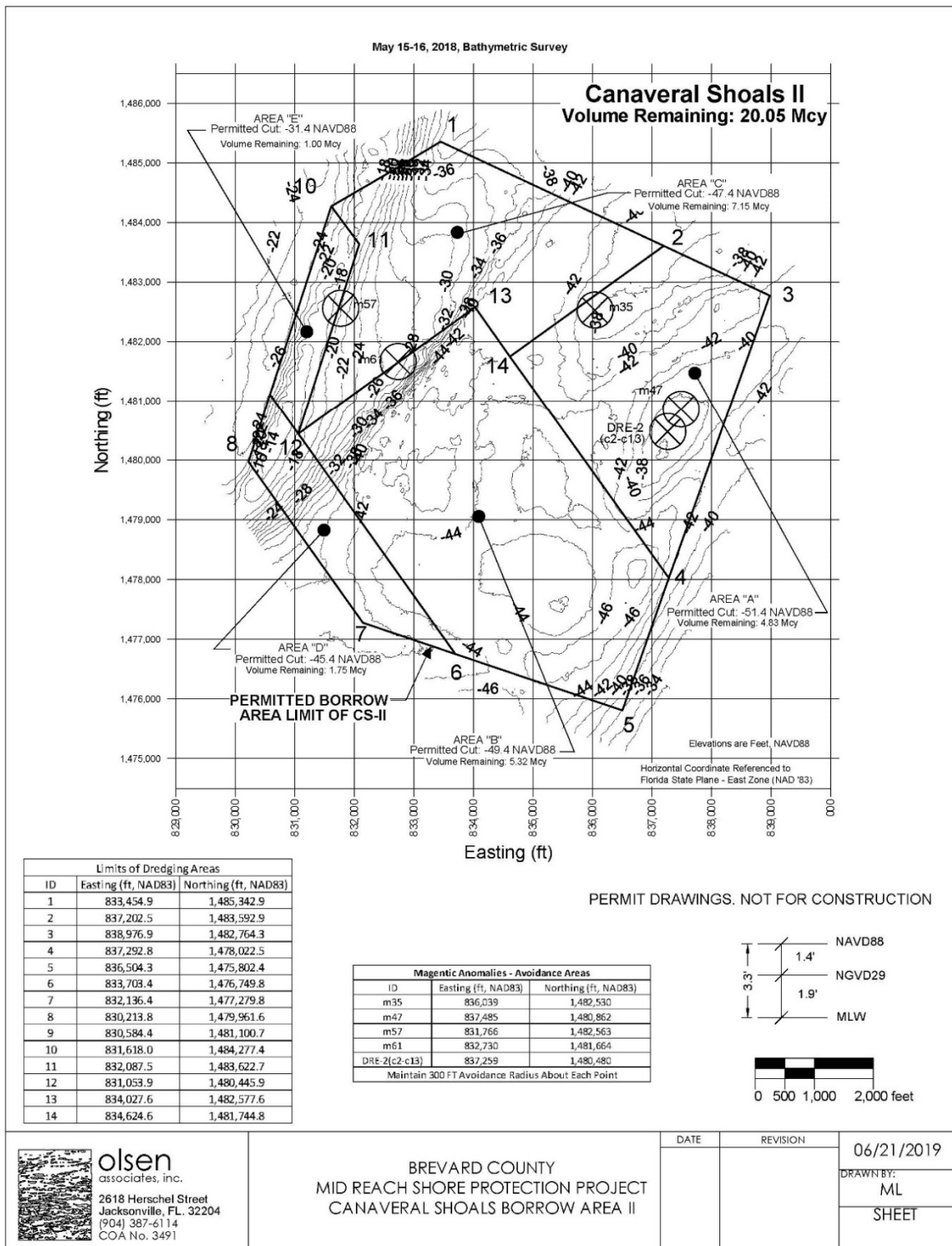
Attest:
Scott Ellis, Clerk

Reviewed for legal form and content by:


Christine Valliere, Assistant County Attorney

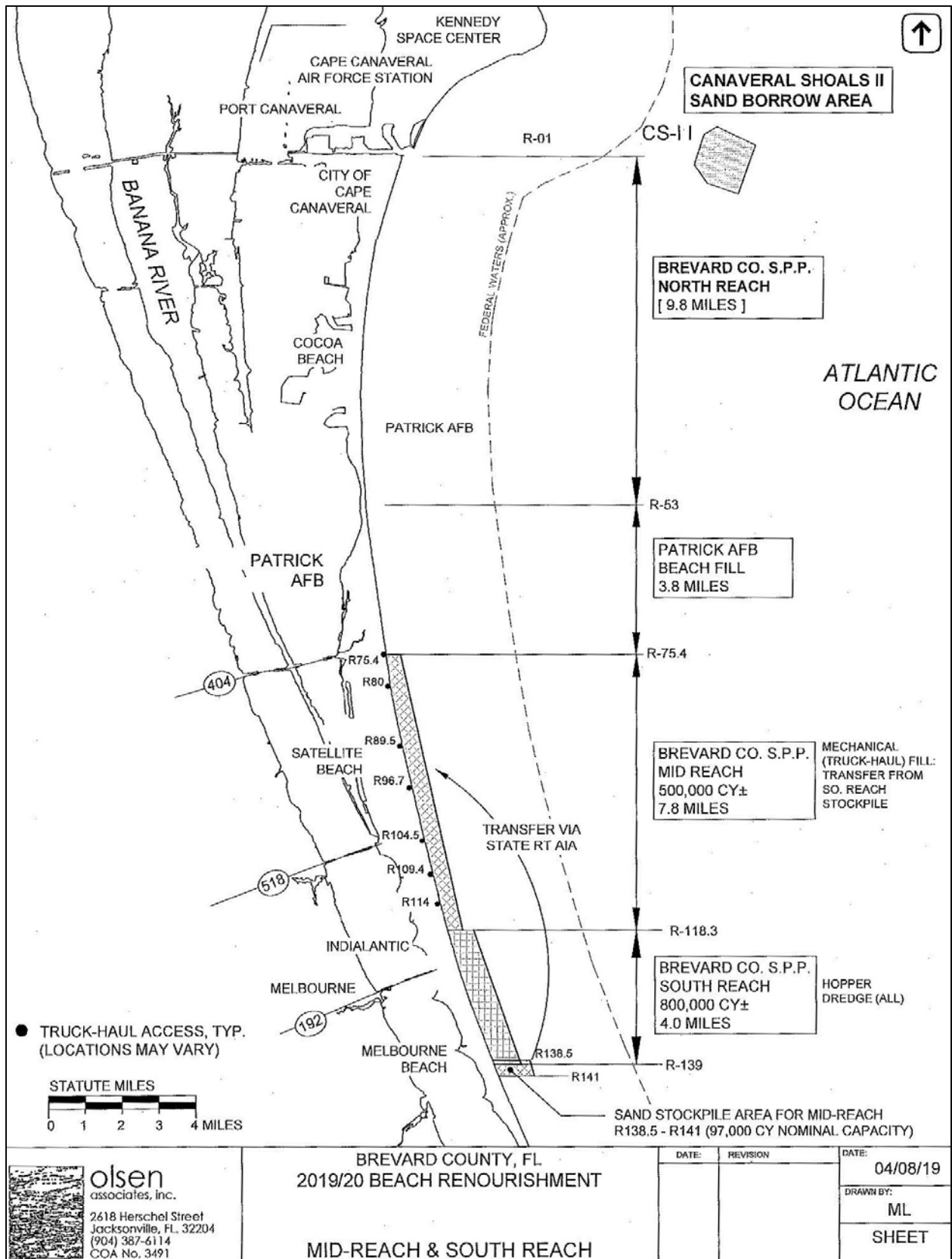
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Attachment 1
CSII Borrow Area Map and Placement Sites



Note: Volume estimates calculated by Olsen Associates, Inc.

Canaveral Shoals II Borrow Area Map



Brevard Mid and South-Reach Placement Areas

Attachment 2

Environmental Compliance Requirements

The following referenced documents contain required environmental compliance responsibilities to be implemented by USACE and/or the County. Each of these documents and their associated requirements (e.g., Reasonable and Prudent Measures / Terms and Conditions (ESA), Conservation Recommendations (MSA), cultural resource avoidance buffers, (NHPA), permit conditions (CZMA), etc.) are located at these locations:

<https://www.saj.usace.army.mil/About/Divisions-Offices/Planning/Environmental-Branch/Environmental-Documents/> and <https://www.saj.usace.army.mil/About/Divisions-Offices/Planning/Environmental-Branch/Environmental-Compliance/#Brevard>.

It is the responsibility of USACE and/or the County to ensure compliance with all of these environmental requirements. USACE will prepare and provide to BOEM before commencing construction an Environmental Compliance Matrix (ECM), in coordination with the County and BOEM, to document all environmental requirements and identify roles and responsibilities to ensure compliance prior to, during, and after construction. USACE will ensure that all requirements relevant to the construction contract are integrated into the contract plans and specifications as appropriate.

NEPA:

- 2005. *Environmental Assessment. Issuance of a Noncompetitive Lease for Canaveral Shoals II Sand and Gravel Borrow Area. Brevard County Beach Erosion Control Project and Memorandum of Agreement with Patrick Air Force Base for Canaveral Shoals II Sand and Gravel Borrow Area. Minerals Management Service. Herndon, VA.*
- 2009. *Environmental Assessment. Issuance of a Negotiated Agreement for Use of Outer Continental Shelf Sand for Canaveral Shoals in the Brevard County (South Reach) Shore Protection Project. MMS 2009-047. 31 pp + apps.*
- 2011. *Final Integrated General Reevaluation Report (GRR) and Supplemental Environmental Impact Statement (SEIS); Brevard County, Florida; Hurricane and Storm Damage Reduction Project Mid Reach Segment. U.S. Army Corps of Engineers Jacksonville District (August 2010 (Revised April 2011)).*
- 2013. *Environmental Assessment. Issuance of Outer Continental Shelf Sand from Canaveral Shoals II in the Brevard County Shore Protection Project (SPP) North Reach and South Reach. BOEM 2013-01151. 46 pp + apps.*
- 2016. *Final Environmental Assessment. Proposed Use of Upland Quarries as an Additional Source of Sand Brevard County, Florida Hurricane and Storm Damage Reduction Project Mid-Reach Segment. U.S. Army Corps of Engineers. August 4, 2016.*
- 2017. *Issuance of a Negotiated Agreement for Use of Outer Continental Shelf Sand from Canaveral Shoals II in the Brevard County Shore Protection Project (North Reach and South Reach); Environmental Assessment. U.S. Department of the Interior Bureau of Ocean Energy Management (September 2017).*
- 2019. *Supplemental Environmental Assessment on Proposed Stockpile Area; Brevard County Florida Shore Protection Project Mid-Reach Segment; Brevard County, FL. U.S. Army Corps of Engineers Jacksonville District and Bureau of Ocean Energy Management (Cooperating Agency).*

ESA:

- U.S. Fish and Wildlife Statewide Programmatic Biological Opinion (SPBO) (March 13, 2015)
- U.S. Fish and Wildlife Service Programmatic Piping Plover Biological Opinion (P3BO) (May 22, 2013)
- U.S. Fish and Wildlife Service Decision Document, Brevard County Mid-Reach)SPBO and P3BO) (March 7, 2019)
- U.S. Fish and Wildlife Service Decision Document, Brevard County South Reach (SPBO and P3BO) (May 14, 2019)
- South Atlantic Regional Biological Opinion for Continued Hopper Dredging of Channels and Borrow Areas in the Southeastern US (September 25, 1997) (Currently under re-initiation)
- Brevard Mid-Reach Beach Nourishment (SAJ-2005-8688) (Consultation Number F/SER/2005/06003) (September 4, 2008)

EFH:

- National Marine Fisheries Service Habitat Conservation Division letter dated January 12, 2005 (NMFS conservation recommendations associated with North Reach, South Reach, and PAFB project)
- National Marine Fisheries Service Habitat Conservation Division letter dated January 22, 2010 (NMFS comments on Draft GRR/SEIS)
- National Marine Fisheries Service Habitat Conservation Division letter dated April 20, 2012 (NMFS Conservation Recommendations in response to public notice associated with Permit No. SAJ-2005-8688)
- Email dated March 29, 2019 from Pace Wilber (NMFS) to Wendy Dauberman-Zerby (USACE)

SHPO:

- USACE letter to Tim Parsons, Ph.D., SHPO (dated May 03, 2019)
- SHPO response letter to USACE (DHR Project File No.: 2015-0809-C) (dated May 15, 2019)

JCP:

- Permit No. 0254479-001-JC
- Permit Modification No. 0254479-005-JN
- Permit No. 0137212-016-JC
- Permit Modification No. 0137212-017-JN

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Amendment to BOEM Negotiated Agreement No. OCS-A 0526

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND THE
U.S. ARMY CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR THE BREVARD COUNTY SHORE PROTECTION PROJECT
IN BREVARD COUNTY, FLORIDA**

Title I. Explanatory Recitals

WHEREAS, on August 29, 2019, the Department of the Interior's ("DOI") Bureau of Ocean Energy Management ("BOEM") and the Department of the Army, acting through the U.S. Army Corps of Engineers ("USACE"), with the cooperation of Brevard County (the "County"), collectively the "Parties", entered into Memorandum of Agreement OCS-A 0526 ("MOA"), which authorized the use of up to 1,300,000 cubic yards of Outer Continental Shelf (OCS) sediment resources from the Canaveral Shoals II Borrow Area (herein after referred to as the "CSII Borrow Area") for exclusive use in a shore protection project, to conduct the initial nourishment of the Mid-Reach and periodic renourishment of the South Reach segments of the Brevard County Florida Shore Protection Project along the Brevard County shoreline (hereinafter the "Project");

WHEREAS, on April 24, 2020, the County submitted a written request to BOEM seeking the addition of the North Reach segment of the Project to the placement areas for the current MOA, requiring an increase in OCS sediment resources from the CSII Borrow Area from 1,300,000 cubic yards to 2,020,000 cubic yards;

WHEREAS, on May 18, 2020, BOEM recognized the need to modify or clarify a few responsibilities of the signatories to this noncompetitive negotiated agreement;

THEREFORE, this Amendment to BOEM Negotiated Agreement No. OCS-A 0526 modifies the MOA as follows:

Title I (A) is replaced with the following:

A. Pursuant to the authority and in accordance with Section 101(b)(7) of the Water Resources Development Act of 1996 (P.L. 104-303) as amended by Section 3045(a) of the Water Resources Development Act of 2007 (P.L. 110-114), the Department of the Army, acting through the United States Army Corps of Engineers, Jacksonville District (USACE), with the cooperation of Brevard County, Florida (the "County"), is endeavoring to conduct the initial nourishment of the Mid-

Reach segment and periodic renourishment of the beach along South-Reach and North-Reach segments of the Brevard County, Florida Shore Protection Project shoreline. USACE will also be conducting a periodic renourishment of the Patrick Air Force Base segment of the Brevard County shoreline on behalf of the 45th Space Wing, in association with this construction event, under a separate Memorandum of Agreement.

Title II (A) is replaced with the following:

A. The Department of the Interior (DOI), acting through the Bureau of Ocean Energy Management (BOEM), enters into this Memorandum of Agreement (MOA) with the County and USACE (collectively with DOI or BOEM, the “Parties”) providing for the use of up to 2,020,000 cubic yards of Outer Continental Shelf sand resources (“OCS sand resources”) for the Project under the authority of Section 8(k)(2) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1337(k)(2)). The term “OCS sand resources” means the sediment deposits found on or below the surface of the seabed on the Outer Continental Shelf (OCS), as defined in Section 2(a) of the OCSLA (43 U.S.C. § 1331(a)). The total 2,020,000 cubic yards includes 500,000 cubic yards for the Mid-Reach segment, 800,000 cubic yards for the South-Reach segment and 720,000 cubic yards for the North-Reach segment. It does not include 600,000 cubic yards for the Patrick Air Force Base segment, for which USACE anticipates executing a separate agreement. This MOA authorizes the Canaveral Shoals II Borrow Area (hereinafter called the CSII Borrow Area), as designated and delineated in Table 1 and on the attached maps (**Attachment 1**), in accordance with the terms of this MOA. After removal of the sand resources from the OCS and placement of those resources as specified in this MOA, BOEM has no jurisdiction over those sand resources unless they return to the OCS.

Table 1. CSII Borrow Area Coordinates

Point	Latitude	Longitude	Easting	Northing
1	28.418717	80.448451	833,454.9	1,485,342.9
3	28.411554	80.431310	838,976.9	1,482,764.3
5	28.392439	80.439102	836,504.3	1,475,802.4
7	28.396557	80.452666	832,136.4	1,477,279.8
8	28.403957	80.458609	830,213.8	1,479,961.6
10	28.415809	80.454180	831,618.0	1,484,277.4

Note: Longitude and Latitude in Geographic Coordinate System NAD 1983. Easting and Northing in Florida State Plane Coordinate System (ft) NAD 1983

Title II (B) is replaced with the following:

B. BOEM, under the authority delegated by the Secretary of the Interior, is authorized, pursuant to Section 8(k)(2) of the OCSLA (43 U.S.C. § 1337(k)(2)) to enter into this MOA concerning the potential use of OCS sand resources.

BOEM has determined that the Project meets the requirements of Section 8(k)(2)(A)(i) of the OCSLA. Therefore, in accordance with Section 8(k)(2), and subject to the terms and conditions contained herein, BOEM hereby authorizes the use of OCS sand resources from the CSII Borrow Area, identified in Table 1, for the construction undertaken in furtherance of the Project. The Parties acknowledge that under the terms of Section 8(k)(2)(B), BOEM will not assess any fee directly or indirectly against USACE or the County for the use of the OCS sand resources described herein.

Nothing in this MOA is intended to abrogate or diminish the Secretary of the Interior's authority under the OCSLA to oversee and regulate the removal of OCS sand resources. Pursuant to 30 CFR 583.330, failure to comply with any applicable law, provision, term, or condition of this agreement may result in termination of the agreement at the sole discretion of BOEM, referral to the Federal or State agency with jurisdiction, or both. It may also delay or prevent BOEM's approval of future requests for use of OCS sand by the parties to this agreement.

The MOA may be terminated by BOEM consistent with provisions in 30 CFR 583.350. If USACE or the County violates any provisions of this MOA, BOEM may, by written notice, suspend the MOA and order any further operations of USACE, the County, or its contractors under this agreement to cease, except such operations as may be necessary to remedy any violations. If USACE or the County fails to remedy violations within thirty (30) days after receipt of suspension notice, BOEM may, by written notice, terminate this MOA. In the event that BOEM suspends or terminates the MOA, USACE or the County will not be entitled to compensation as a result of expenses or lost revenues resulting from the suspension or termination.

Title III is replaced with the following:

This MOA is intended to facilitate construction of the Brevard County, Florida Shore Protection Project along the North, Mid, and South-Reach shorelines. This MOA authorizes the USACE to extract up to 2,020,000 cubic yards of OCS sand resources to nourish the Mid-Reach and re-nourish the South-Reach and North-Reach segments of the Brevard County shoreline. The OCS sand resources must be extracted from the CSII Borrow Area (see **Attachment 1**).

Title IV (C) is replaced with the following:

C. This MOA applies only to the extraction, transportation, and placement of OCS sand resources as described above. The USACE or County must ensure that anyone performing any activity under this MOA is contractually bound to follow the obligations, terms, and conditions of this MOA. This MOA will terminate or expire (1) upon USACE sending written notice that it has obtained sufficient OCS sand resources to complete the Project, up to 2,020,000 cubic yards, or (2) three years from the date of the original execution of this MOA, whichever occurs first. Upon request by USACE, the Parties may agree to extend the terms of this MOA as necessary to provide the USACE and its contractor(s) with additional time to complete the Project. The Parties acknowledge that there may be a need for future OCS sand resources for periodic maintenance, augmentation or construction purposes. BOEM, USACE, and the County may enter into subsequent agreements, for the use of additional OCS sand resources for the Project, consistent with each Party's responsibilities under applicable law.

This Amendment may be executed in counterparts, each of which will be deemed to be an original. The signatures on this Amendment may be executed on separate pages and all of which together will constitute one and the same agreement.

Title IV (D)(9) is replaced with the following:

9. Encounter of Ordnance

The encounter of ordnance is possible on the OCS, and it is the responsibility of the USACE, County, its agents, and/or its contractor(s) to proactively manage this risk and any resulting situation should the need arise. The USACE, County, and/or its agents must address how the encounter of ordnance will be handled in the Plan that is prepared pursuant to Paragraph 1. If the USACE, County or its contractors encounter any ordnance while conducting dredging activities at FCBA, it will report the discovery within 24 hours to Dr. Jeff Reidenauer, Chief, BOEM Marine Minerals Division, at (703) 787-1851 and dredgeinfo@boem.gov.

Title IV (D)(12) is replaced with the following:

12. Other Responsibilities

BOEM does not warrant that the OCS sand resources used in this Project are suitable for the purpose for which they are intended by the USACE or the County. BOEM's responsibility under this MOA is limited to the authorization of access to OCS sand resources from the CS II Borrow Area as described herein, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken, damages or liabilities, incidents or injuries, or negligence by the other Parties in pursuit of the Project.

The USACE and/or the County, its agent(s), and its contractor(s) agree to hold BOEM harmless from, any claims for loss, costs, damages, injuries to persons, or expenses caused by or resulting from any operation under this MOA; to the extent authorized by law, the USACE, County, their agent(s), and contractor(s) agree to indemnify BOEM for any such claim. However, the USACE, County, or their agent(s) and contractor(s) are not responsible to BOEM for any loss, cost, damage, injury, or expense that results from (1) negligence of BOEM, other than the commission or omission of a discretionary function or duty on the part of a Federal Agency whether or not the discretion involved is abused, or (2) the USACE or County's compliance with an order or directive imposed under this MOA against which the USACE or County files an administrative appeal before the cause of action for the claim arises and pursues it diligently thereafter.

The USACE and County or their contractor(s) must notify BOEM of any encounter of hazards on the OCS and any OCS sediment placed on the beach that is unsuitable relative to native sediment characteristics. The specific location where unsuitable sediment was dredged, or where hazards were encountered, within the CS II Borrow Area must be delineated and provided to BOEM for future planning purposes.

Attachment 1 is replaced with the attached maps.

Attachment 2 is replaced with the attached Environmental Compliance Requirements.

[The remainder of this page was intentionally left blank. Signature Pages to follow.]

Amendment to BOEM Negotiated Agreement No. OCS-A 0526

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND THE
U.S. ARMY CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR THE BREVARD COUNTY SHORE PROTECTION PROJECT
IN BREVARD COUNTY, FLORIDA**

Signatory Page

Colleen Finnegan
Acting Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

Andrew D. Kelly
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County
Commissioners By:

Bryan Lober, Chair

As approved by the Board on: _____

Attest: _____
Scott Ellis, Clerk

Reviewed for legal form and content by:

Christine Valliere, Assistant County Attorney

Amendment to BOEM Negotiated Agreement No. OCS-A 0526

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Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County
Commissioners By:

Bryan Lober, Chair

As approved by the Board on: _____

Attest: _____
Scott Ellis, Clerk

Reviewed for legal form and content by:

Christine Valliere, Assistant County Attorney

Amendment to BOEM Negotiated Agreement No. OCS-A 0526

**MEMORANDUM OF AGREEMENT
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND THE
U.S. ARMY CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR THE BREVARD COUNTY SHORE PROTECTION PROJECT
IN BREVARD COUNTY, FLORIDA**

Signatory Page

Colleen Finnegan
Acting Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

Andrew D. Kelly
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County
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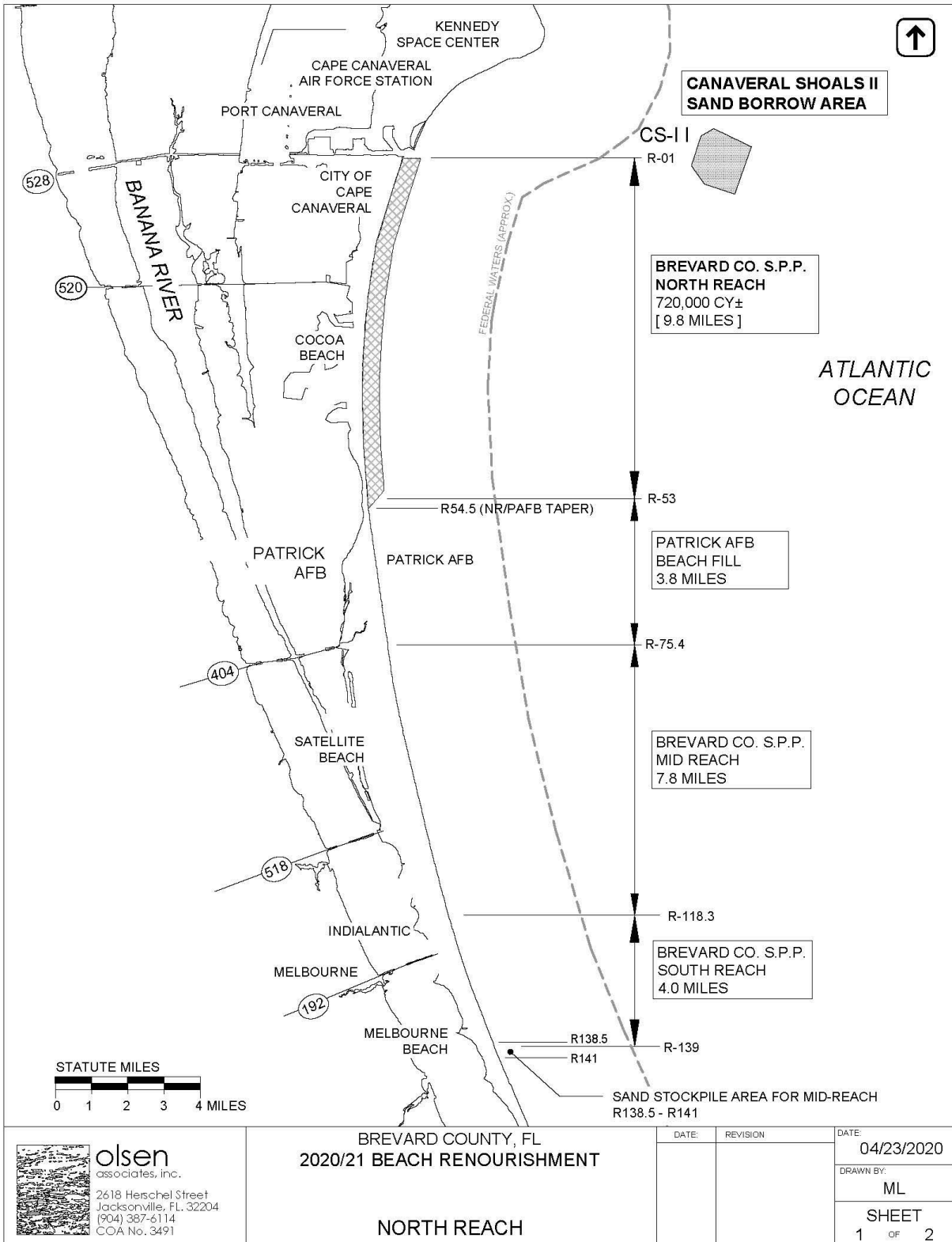
As approved by the Board on: _____

Attest: _____
Scott Ellis, Clerk

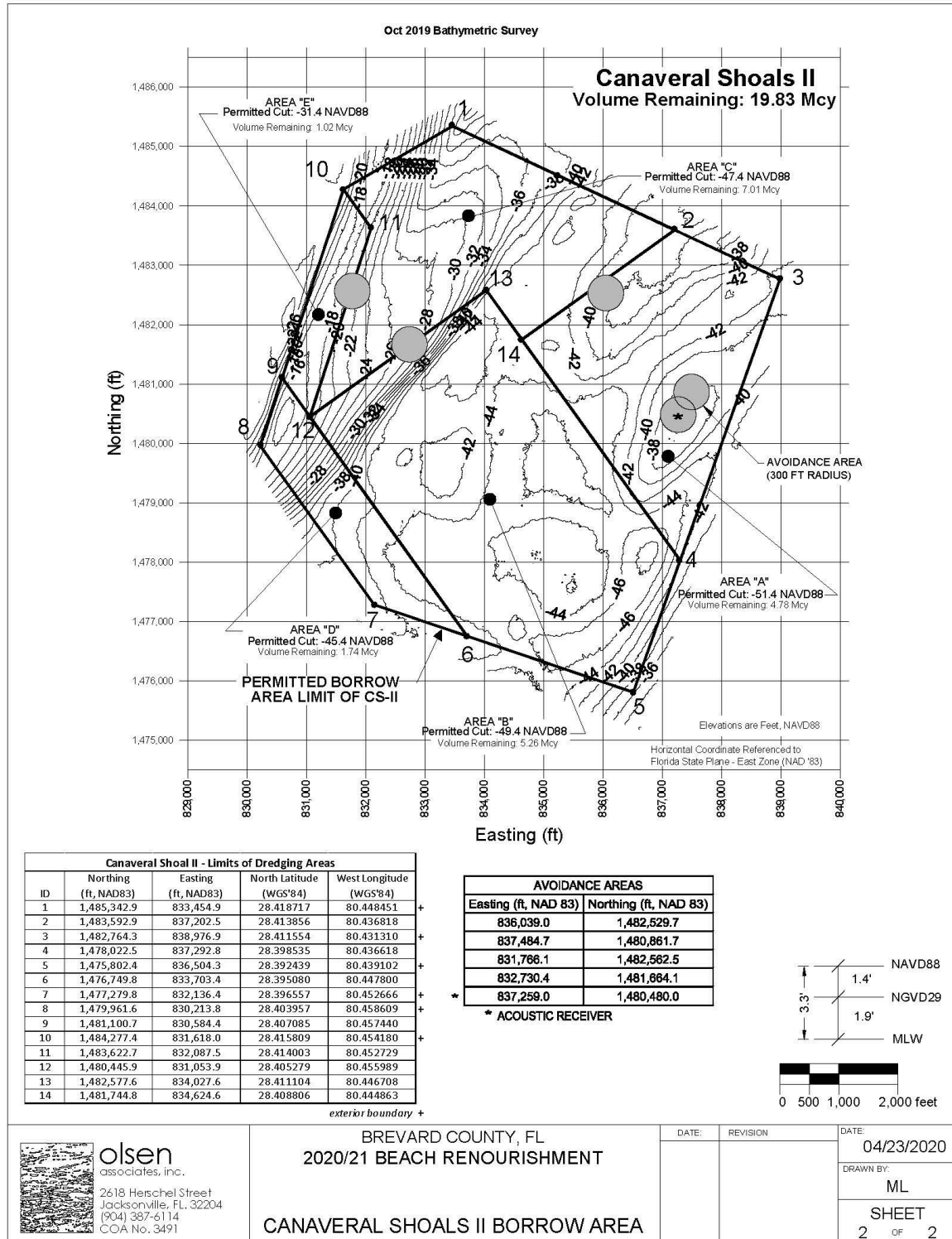
Reviewed for legal form and content by:

Christine Valliere, Assistant County Attorney

Attachment 1 **CSII Borrow Area and Placement Sites**



Brevard North, Mid, and South-Reach Placement Areas



Note: Volume estimates calculated by Olsen Associates, Inc.
Canaveral Shoals II Borrow Area Map

Attachment 2

Environmental Compliance Requirements

The following referenced documents contain required environmental compliance responsibilities to be implemented by USACE and/or the County. Each of these documents and their associated requirements (e.g., Reasonable and Prudent Measures / Terms and Conditions (ESA), Conservation Recommendations (MSA), cultural resource avoidance buffers, (NHPA), permit conditions (CZMA), etc.) are located at these locations:

<https://www.saj.usace.army.mil/About/Divisions-Offices/Planning/Environmental-Branch/Environmental-Documents/> and <https://www.saj.usace.army.mil/About/Divisions-Offices/Planning/Environmental-Branch/Environmental-Compliance/#Brevard>.

It is the responsibility of USACE and/or the County to ensure compliance with these as well as any other applicable environmental requirements. USACE will prepare and provide to BOEM before commencing construction an Environmental Compliance Matrix (ECM), in coordination with the County and BOEM, to document all environmental requirements and identify roles and responsibilities to ensure compliance prior to, during, and after construction. USACE will ensure that all requirements relevant to the construction contract are integrated into the contract plans and specifications as appropriate.

NEPA:

- 2005. *Environmental Assessment. Issuance of a Noncompetitive Lease for Canaveral Shoals II Sand and Gravel Borrow Area. Brevard County Beach Erosion Control Project and Memorandum of Agreement with Patrick Air Force Base for Canaveral Shoals II Sand and Gravel Borrow Area. Minerals Management Service. Herndon, VA.*
- 2009. *Environmental Assessment. Issuance of a Negotiated Agreement for Use of Outer Continental Shelf Sand for Canaveral Shoals in the Brevard County (South Reach) Shore Protection Project. MMS 2009-047. 31 pp + apps.*
- 2011. *Final Integrated General Reevaluation Report (GRR) and Supplemental Environmental Impact Statement (SEIS); Brevard County, Florida; Hurricane and Storm Damage Reduction Project Mid Reach Segment. U.S. Army Corps of Engineers Jacksonville District (August 2010 (Revised April 2011)).*
- 2013. *Environmental Assessment. Issuance of Outer Continental Shelf Sand from Canaveral Shoals II in the Brevard County Shore Protection Project (SPP) North Reach and South Reach. BOEM 2013-01151. 46 pp + apps.*
- 2016. *Final Environmental Assessment. Proposed Use of Upland Quarries as an Additional Source of Sand Brevard County, Florida Hurricane and Storm Damage Reduction Project Mid-Reach Segment. U.S. Army Corps of Engineers. August 4, 2016.*
- 2017. *Issuance of a Negotiated Agreement for Use of Outer Continental Shelf Sand from Canaveral Shoals II in the Brevard County Shore Protection Project (North Reach and South Reach); Environmental Assessment. U.S. Department of the Interior Bureau of Ocean Energy Management (September 2017).*
- 2019. *Supplemental Environmental Assessment on Proposed Stockpile Area; Brevard County Florida Shore Protection Project Mid-Reach Segment; Brevard County, FL. U.S.*

Army Corps of Engineers Jacksonville District and Bureau of Ocean Energy Management (Cooperating Agency).

ESA:

- U.S. Fish and Wildlife Statewide Programmatic Biological Opinion (SPBO) (March 13, 2015)
- U.S. Fish and Wildlife Service Programmatic Piping Plover Biological Opinion (P3BO) (May 22, 2013)
- U.S. Fish and Wildlife Service Decision Document, Brevard County Mid-Reach) SPBO and P3BO) (March 7, 2019)
- U.S. Fish and Wildlife Service Decision Document, Brevard County South Reach (SPBO and P3BO) (May 14, 2019)
- South Atlantic Regional Biological Opinion for Dredging and Material Placement in the Southeastern US (March 27, 2020) (2020 SARBO)
- Brevard Mid-Reach Beach Nourishment (SAJ-2005-8688) (Consultation Number F/SER/2005/06003) (September 4, 2008)

EFH:

- National Marine Fisheries Service Habitat Conservation Division letter dated January 12, 2005 (NMFS conservation recommendations associated with North Reach, South Reach, and PAFB project)
- National Marine Fisheries Service Habitat Conservation Division letter dated January 22, 2010 (NMFS comments on Draft GRR/SEIS)
- National Marine Fisheries Service Habitat Conservation Division letter dated April 20, 2012 (NMFS Conservation Recommendations in response to public notice associated with Permit No. SAJ-2005-8688)
- Email dated March 29, 2019 from Pace Wilber (NMFS) to Wendy Dauberman-Zerby (USACE)

SHPO:

- USACE letter to Tim Parsons, Ph.D., SHPO (dated May 03, 2019)
- SHPO response letter to USACE (DHR Project File No.: 2015-0809-C) (dated May 15, 2019)

JCP:

- Permit No. 0134869-009-JC
- Permit No. 0254479-001-JC
- Permit Modification No. 0254479-005-JN
- Permit No. 0137212-016-JC
- Permit Modification No. 0137212-017-JN



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.2

7/21/2020

Subject:

Approval Re: Right-of-Way Use Agreement with The Viera Company for the Central Viera Planned Unit Development - District 4

Fiscal Impact:

None

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Right-of-Way Use Agreement with The Viera Company to permit improvements to be installed and maintained in Central Viera.

Summary Explanation and Background:

The Viera Company (TVC) desires to install and maintain improvements in the public rights-of-way within the Central Viera Planned Unit Development, depicted on Attachment "A" of the Right-of-Way Use Agreement, which have been or will be dedicated to Brevard County. The improvements will consist of landscaping, signage, hardscape, irrigation, and traffic control devices, excluding traffic signals. The improvements shall be submitted by TVC to the County as right-of-way permit applications, and issuance of the permits shall be subject to approval by the County.

The County may allow the use of the public right-of-way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. In accordance with the Agreement, TVC shall be required to maintain, repair, and replace the permitted improvements without cost to the County. Additionally, TVC is required to provide general liability insurance in an amount not less than one million dollars and name the County as additional insured. The Right-of-Way Use Agreement for Central Viera has been reviewed and approved by the County Attorney's Office and Risk Management.

The initial term of this Agreement shall be twenty years commencing with the date of execution by the Board and shall automatically renew annually unless terminated by either party with sixty days' written notice. Upon termination, TVC or the applicable assignee, at the request of the County, shall remove all improvements from the rights-of-way or TVC or the applicable assignee shall reimburse the County for the cost of such removal. Furthermore, in the event of termination and the County assumes ownership of the improvements, the County does not assume maintenance responsibility unless expressly provided in writing.

Clerk to the Board Instructions:

Please return the fully executed Right-of-Way Use Agreement to the Public Works Department.



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: The Viera Company		2. Amount: 0.00
3. Fund/Account #: N/A	4. Department Name: Public Works	
5. Contract Description: Central Viera PUD Right-of-Way Use Agreement		
6. Contract Monitor: Jeanette Scott		8. Contract Type: USE AGREEMENT
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Thomas-Wood, Tammy

Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevardfl.gov
Date: 2020.07.08 11:13:10 -04'00'

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.07.08 11:13:10 -04'00'

County Attorney

☒
☐

Brewer, Jad

Digitally signed by Brewer, Jad
Date: 2020.07.08 11:01:01 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

RIGHT-OF-WAY USE AGREEMENT (Central Viera)

This Right-Of-Way Use Agreement (the “Agreement”), made and entered into agreement by and between Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as “County”), and The Viera Company, a Florida corporation (hereinafter referred to as “The Viera Company”) whose principal address is 7380 Murrell Road, Suite 201, Viera, Florida 32940.

RECITALS

Whereas, the public rights-of-way within the Central Viera Planned Unit Development (P.U.D.) of the “Viera” master planned community located in Brevard County, Florida, more particularly set forth in Attachment “A” attached hereto and incorporated herein by this reference have been or will be dedicated to Brevard County, Florida (collectively, the “Public Right-of-Way”);

Whereas, The Viera Company desires to improve the Public Right-of-Way by installing improvements, which may consist of, but are not limited to, improvements for landscaping, signage, hardscape, irrigation, street lighting, decorative pavement treatments, traffic control devices (excluding traffic signals), hardscape improvements, and/or other related improvements pursuant to plans and specifications approved by the County and further described below;

Whereas, the County pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of a public right-of-way for purposes which do not conflict with the interests of the public or are in the interests of the public; and

Whereas, the County has determined that use of the Public Right-of-Way by The Viera Company for the installation, operation, maintenance, repair and improvement of such improvements to the Public Right-of-Way pursuant to this Agreement promotes the public interest.

Now therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Recitals

The above recitals are true and correct and incorporated into this Agreement by this reference.

2. Definitions

The following terms used in this Agreement shall have the meaning given to such terms below:

- a) Agreement: shall mean this Right-of-Way Use Agreement (Central Viera).

- b) Association: shall mean the homeowner's association to which The Viera Company elects to assign its rights, and delegates its duties and obligations to, under this Agreement as permitted under Paragraph 13 of this Agreement, with the Association to be either the Community Association or the Neighborhood Association, as to be determined by The Viera Company in its sole and absolute discretion.
- c) Community Association: shall mean Central Viera Community Association, Inc., a Florida not-for-profit corporation (the "Community Association"), as more particularly described in that certain Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Central Viera Community recorded in Official Records Book 3409, Page 624, of the Public Records of Brevard County, Florida, as may be amended from time to time.
- d) County: shall mean Brevard County, Florida, a political subdivision of the State of Florida.
- e) Designated Premises: shall mean that portion of the Public Right-of-Way more particularly described in Attachment "A" attached hereto and incorporated herein by this reference, where the Improvements will be installed and maintained, with the Designated Premises to be more particularly described in the Plans as approved by the County
- f) Improvements: shall mean those certain improvements installed or to be installed by The Viera Company within the Designated Premises in accordance with the Plans and maintained by The Viera Company in accordance with the provisions of this Agreement as approved by the County pursuant to any Right-of-Way Permit issued by the County.
- g) Neighborhood Association: shall mean a Florida not-for-profit corporation responsible for the operation of a community neighborhood subdivision as defined in Florida Statutes, Chapter 720 that is not the Community Association. Public Right-of-Way: shall have the meaning given to such term in the first recital set forth above.
- h) Plans: shall mean those certain plans for the construction and installation of Improvements which have been approved by The Viera Company and the County as part of a Right-of-Way Permit.
- i) Prompt or Promptly: For purposes of paragraph 8, the term "promptly" shall mean no later than fourteen days after The Viera Company receives written notice of the need for maintenance, repairs, or replacements to the applicable Improvements (as may be extended on a day-by-day basis for acts of force majeure beyond The Viera Company's control); however, to the extent such maintenance, repairs, or replacements cannot reasonably be completed within fourteen days, the term "promptly" shall mean The Viera Company shall commence such maintenance, repairs, or replacements within such initial fourteen day period and shall diligently work to complete such maintenance, repairs, or replacements. For purposes of this paragraph 10, the term "promptly" or "prompt" shall mean no later than fourteen days after The Viera Company receives actual notice of the

existence of a hazardous condition, or a condition in need of maintenance as required hereunder, at the Designated Premises.

j) Public Right-of-Way: shall have the meaning given to such term in the first recital set forth above.

k) Right-of-Way Permit: shall mean the official written approval to begin construction or installation of Improvements according to the application, plans, specifications and conditions approved by the County.

l) The Viera Company: shall mean The Viera Company, a Florida corporation.

3. Construction and Maintenance of Property

During the term of this Agreement, The Viera Company hereby agrees to construct and maintain the Improvements within the Designated Premises in the manner described in this Agreement and as permitted by the County. Improvements shall be constructed and installed in such a manner so as to not cause damage to or interfere with any County improvements or facilities. Any such damage to County improvements or facilities shall be remedied immediately at no cost to the County.

4. Term

The initial term of this Agreement shall be twenty years commencing with the date of the execution of this Agreement by the County and The Viera Company, and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with paragraph 15 Termination herein.

5. Use of Designated Premises

During the term of this Agreement, The Viera Company shall use the Designated Premises only for construction and installation of the Improvements and related maintenance thereto. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the Designated Premises as part of the Improvements shall be for decorative or informational purposes only and not for human occupancy, nor shall such Improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth for the Improvements upon the Designated Premises shall be the only use consented to by the County, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately terminate this Agreement.

6. Improvements

All Improvements permitted and installed upon the Designated Premises by The Viera Company shall be maintained by The Viera Company on the Designated Premises during the term of this Agreement in accordance with this Agreement and any County issued Right-of-Way Permit. It is hereby agreed and understood that any Improvements placed on or constructed on the Designated Premises and permanently attached thereto, shall remain the property of The Viera Company and that The Viera Company retains the right to remove such improvement within

sixty days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such Improvements are not removed within sixty days of termination, the Improvements shall become the property of the County, and the County may remove the Improvements. To the extent the County elects to remove any such Improvements, The Viera Company shall reimburse the County for the cost of removal within thirty days of receipt of an invoice for such removal expenses.

7. Utilities

The Viera Company shall pay all charges for electrical service and other utility services supplied to The Viera Company at the Designated Premises for the Improvements during the term of this Agreement.

8. Repairs and Maintenance

During the term of this Agreement, The Viera Company shall, at its own expense, maintain the Designated Premises and all Improvements on the Designated Premises in accordance with all applicable County and Florida Department of Transportation current maintenance and safety requirements and as updated and make all necessary repairs and replacements to the Designated Premises and/or the Improvements. Such maintenance, repairs and replacements shall be made promptly as and when necessary. Notification of the need for such repair and/or maintenance may be given to The Viera Company by written or electronic communication.

9. Illegal, Unlawful or Improper Use

The Viera Company shall make no unlawful, improper, immoral or offensive use of the Designated Premises, nor will The Viera Company use the Designated Premises or allow use of the Designated Premises for any purposes other than that hereinabove set forth. Failure of The Viera Company to comply with this provision shall be considered a material default under this Agreement. In the event any of the Improvements are deemed a traffic safety hazard by the County or the Florida Department of Transportation, such use shall be deemed an improper use and this Agreement shall be subject to immediate termination.

10. Indemnification and Insurance

Except where limited by law, The Viera Company agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the Designated Premises or any of the Improvements thereon or any equipment or fixtures used in connection with the Designated Premises by The Viera Company or its employees or independent contractors. The Viera Company agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with The Viera Company's use of the Designated Premises pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. The Viera Company shall include in any contract for work upon or involving the Designated Premises that the contractor shall indemnify and hold harmless the County from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the

contractor in the performance of the contract. The parties acknowledge specific consideration has been exchanged for the provision.

The Viera Company further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability Insurance insuring The Viera Company against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Designated Premises and the Improvements thereon. Such policies of insurance shall insure The Viera Company in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida, 32940, within ten days of the date of execution of this Agreement by The Viera Company and the County and annually upon insurance renewal. The County shall be named as an additional insured on the policy that The Viera Company secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies. The County's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure or maintain the insurance required herein, nor serve as a waiver of any rights or defenses the County may have.

The Viera Company shall also be required to include in any contract for work upon or involving the Designated Premises that the contractor is required to maintain, without cost or expense to the County, the following types of insurance. The policy limits required are to be considered minimum amounts:

- General Liability Insurance in an amount not less than one million dollars combined single limit for each occurrence and to include coverage for Explosion, Collapse, Underground (X.C.U.) hazards.
- Workers' Compensation Insurance (for statutory limits) as required by Florida Statutes, Chapter 440.

Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

The Viera Company shall notify the County promptly in writing of any hazardous condition existing on or about the Designated Premises.

All Improvements or personal property constructed or placed on or about the Designated Premises by The Viera Company or its employees or independent contractors shall be at the risk of The Viera Company, and the County shall not be liable for any damage or loss to any Improvements or personal property located thereon for any cause whatsoever. The Viera Company agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover The Viera Company's interests therein.

At the time of execution of this Agreement, any existing improvements installed on the Designated Premises will be the maintenance responsibility of The Viera Company. In the event any pre-existing improvements causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, The Viera Company will be responsible for prompt repair to such County property. If The Viera Company fails to promptly repair the damage, The Viera Company will pay the County all costs incurred by the County to repair the damage.

11. Right of Entry

It is expressly stipulated that this Agreement is a license for permissive use only and that the construction within and/or upon public property pursuant to this Agreement shall not operate to create or vest any property right in said holder. This Agreement does not relieve The Viera Company of local or other jurisdictional requirements. The County or its agents may enter in and on the Designated Premises at any time for any purpose, including inspecting such property or performing other duties of the County as are required by law or by the terms of this Agreement. Nothing in this Agreement shall limit the County's ability to take necessary and appropriate action to protect property, preserve life, or ensure safety of citizens in any emergency situation. The County shall not be responsible to replace improvements if emergency/safety requires immediate action by the County causing damage or removal of Improvements for preservation of life, safety, and property.

12. Compliance with Statutes

The Viera Company shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Designated Premises for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Designated Premises during the term of the Agreement.

13. Binding Effect; Assignability

This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. The Viera Company shall not assign this Agreement or any portion thereof of The Viera Company's rights, obligations, or duties hereunder to any party without the prior written consent of the County; however, The Viera Company and the County acknowledge and agree that it is intended that The Viera Company will assign its rights, obligations or duties to either the Community Association or a Neighborhood Association (with such assignee association being the "Association" for purposes of this Agreement as to the assigned rights and obligations) upon The Viera Company's completion of installation of the Improvements, as to be determined by The Viera Company in its sole and absolute discretion, and the County shall not unreasonably withhold its consent to such assignment so long as the assignee is either the Community Association or the Neighborhood Association. Any such assignments to a Community Association or a Neighborhood Association or any other permitted assignee shall be by a written instrument executed with the formality of a deed on behalf of The Viera Company assigning such rights, obligations and duties to the assignee, and on behalf of the assignee assuming all such rights, obligations and duties as completely outlined in this Agreement. Such assignments shall also set forth the address of the assignee for purposes of

receiving notices under this Agreement in accordance with paragraph 16 herein below. Such assignments shall include this Agreement as an exhibit thereto. Upon the execution of such assignments by The Viera Company, the assignee, and the County, and its delivery to the County, the County agrees that The Viera Company shall be released from all obligations and duties hereunder as to the assigned obligations and duties and that the County shall thereafter look solely to the applicable assignee for the performance of such obligations and duties. All other assignments shall require written approval by the Board of County Commissioners.

14. Independent Contractor

The Viera Company shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make The Viera Company or any of its agents or employees to be the agent, employee or representative of the County.

15. Termination

This Agreement may be terminated with or without cause by either party upon sixty days' written notice thereof to the other party; provided, however, that upon termination, The Viera Company or, if this Agreement or any portion thereof has been assigned as permitted hereunder, then the applicable assignees of this Agreement, shall, at the request of the County, remove all Improvements to the Designated Premises, or, in the alternative, reimburse the County for the cost of such removal. In the event this Agreement is terminated and the County assumes ownership of the Improvements within the Public Right-of-Way, the County does not assume maintenance responsibility unless expressly provided in writing. Any maintenance performed by the County will not constitute an assumption of maintenance responsibility as may be otherwise assigned by Florida Statute or County Code.

16. Notice; Notice of Breach

Notice under this Agreement shall be given to the County at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940 with a copy to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida 32940. Notice under this Agreement shall be given to The Viera Company at 7380 Murrell Road, Suite 201, Viera, Florida 32940 or by email to brent.albertson@duda.com and vieralegal@duda.com.

In the event the County determines The Viera Company or any assignee has breached any term or provision of this Agreement, the County shall provide written notice of such breach to breaching party and the breaching party shall have thirty days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonable be cured within such thirty day period, then the breaching party shall have such longer period to cure the breach as is reasonably necessary provided, however, that if the breaching party commences reasonable action to remedy the breach within such thirty day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

17. Right to Audit Records

In the performance of this Agreement, The Viera Company and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with

generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of The Viera Company or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to The Viera Company or any assignee not less than five business days advance notice and shall be respectively retained by The Viera Company and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by The Viera Company or any assignee or provided to The Viera Company or any assignee under the terms of this Agreement, are public records and The Viera Company and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

18. Waiver

The waiver by the County of any of The Viera Company's or any assignee's respective obligations or duties under this Agreement shall not constitute a waiver of any other respective obligation or duty of The Viera Company or any assignee under this Agreement.

19. Entirety and Modifications

This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between the County and The Viera Company as to the subject matter of this Agreement. This Agreement and any Attachments may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein. Attachment "A", which is intended to set forth the Designated Premises of this Agreement, may be modified as Improvements are approved pursuant to the terms of this Agreement. This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto.

20. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. Attorney's Fees and Venue

In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

22. Construction of Agreement

The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

23. Effective Date

This Agreement shall be effective on the last signature date required set forth below.

In witness whereof, County and The Viera Company caused this Agreement to be duly executed in their respective names as of the day and year written below.

Attest:

Board of County Commissioners
of Brevard County, Florida

Scott Ellis, Clerk

By:

Bryan Andrew Lober, Chair
As approved by the Board on July 21, 2020

Approved as to legal form and content:

Assistant County Attorney

The Viera Company, a Florida corporation

Printed name: _____

By: _____

Name: _____

Title: _____

Printed name: _____

STATE OF FLORIDA }

}

COUNTY OF BREVARD}

The foregoing instrument was acknowledged before me by physical presence or online notarization this ____ day of _____ 2020, by _____, as _____ of The Viera Company, a Florida corporation, on behalf of the corporation, who is personally known to me.

Notary Public

Printed Name



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3

7/21/2020

Subject:

Approval Re: Dedication of Warranty Deed for Right of Way from Mahaffey Associates West Melbourne, LLC for the Carlton Multi-Family Development - District 3.

Fiscal Impact:

None

Dept/Office:

Public Works Department / Land Acquisition

Requested Action:

It is requested that the Board of County Commissioners approve and accept the Warranty Deed from Mahaffey Associates West Melbourne, LLC.

Summary Explanation and Background:

The subject property is located in Section 19, Township 28 South, Range 37 East, north of Palm Bay Road, west of Hollywood Blvd., along the east side of Interstate 95 in West Melbourne.

Mahaffey Associates West Melbourne, LLC, the owner, is developing the parcel for the Carlton Multi-Family Development. Brevard County Code, Article VII, Section 62-2802, Exhibit 4, states the addition of a right turn lane, will require an additional 12 feet of right of way. The owner has agreed to provide the Warranty Deed for the right of way dedication.

The User Department is in agreeance with this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Dedication of Warranty Deed for Right of Way from Mahaffey Associates
West Melbourne, LLC for the Carlton Multi-Family Development–District 3.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Page Whittle, Land Acquisition Specialist

CONTACT PHONE: 321-690-6847 extension 58351

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor		_____	<u>7-8-2020</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>7-8-2020</u>

AGENDA DUE DATE: July 14, 2020 for the July 21, 2020 Board meeting

WARRANTY DEED

THIS INDENTURE is made this ____ day of May, 2020, between Mahaffey Associates West Melbourne, LLC, a Florida limited liability company, as party of the first part, whose mailing address is 731 Jamestown Drive, Winter Park, FL 32792, and Brevard County, Florida, a political subdivision of the State of Florida, as party of the second part, whose mailing address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940;

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar and No Cents (\$1.00) and other valuable considerations, paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the party of the second part, its successors and assigns the following described lands, situate, lying and being in the County of Brevard, State of Florida, to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"

TO HAVE AND TO HOLD THE SAME, together with all and singular the appurtenances thereunto belonging or in anywise incident and/or appertaining thereto and all the estate, right, title & interest forever, and the said party of the first part does hereby fully warrant the title to said lands, and will defend the same against the lawful claims of all persons whomsoever.

(Signatures and Notary on next page)

IN WITNESS WHEREOF, the party of the first part has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
In the presence of:

Mahaffey Associates West Melbourne LLC,
a Florida limited liability company

Shayne Nichols
Witness
Shayne Nichols
Print Name

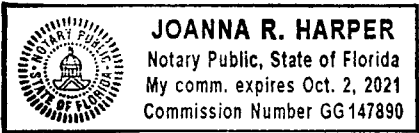
[Signature]
Name: Daniel M. Esterline
Title: Manager

Austin Everett
Witness
Austin Everett
Print Name

[Signature]
Name: M. Thomas Mahaffey, Jr.
Title: Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of physical presence on this 07 day of May, 2020, by Daniel M. Esterline as Manager for Mahaffey Associates West Melbourne LLC, a Florida limited liability company. Is personally known or produced _____ as identification.



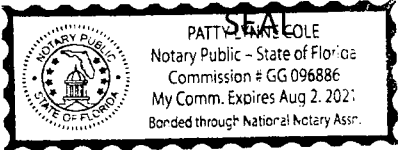
[Signature]
Notary Signature
SEAL

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of physical presence on this 13th day of May, 2020, by M. Thomas Mahaffey, Jr. as Manager for Mahaffey Associates West Melbourne LLC, a Florida limited liability company. Is personally known or produced known to me as identification.

Board Meeting Date: _____
Agenda Item # _____

Patty L. Cole
Notary Signature



LEGAL DESCRIPTION

PARCEL ID# 101

PARENT PARCEL ID#: 28-37-19-00-1
PURPOSE: FEE SIMPLE RIGHT OF WAY

EXHIBIT "A"

SHEET 1 OF 3
NOT VALID WITHOUT SHEETS 1-3
THIS IS NOT A SURVEY

LEGAL DESCRIPTION: PARCEL #101 (PREPARED BY SURVEYOR)

DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF OFFICIAL RECORDS BOOK 8174, PAGE 2206, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING IN SECTION 19, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 19; THENCE NORTH 89°21'54" WEST, ALONG THE NORTH LINE OF SAID SECTION 19, A DISTANCE OF 50.00 FEET, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF HOLLYWOOD BOULEVARD; THENCE SOUTH 00°53'09" WEST, ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 45.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72 SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE SOUTH 00°53'09" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 179.79 FEET TO A POINT, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1050.00 FEET, A CENTRAL ANGLE OF 43°07'51", AND A RADIAL BEARING OF SOUTH 89°06'08" EAST, THENCE SOUTHEASTERLY ALONG THE ARC A DISTANCE OF 790.41 FEET; THENCE NORTH 90°00'00" WEST ALONG THE SOUTH LINE OF SAID OFFICIAL RECORDS BOOK 8174, PAGE 2206, A DISTANCE OF 20.14 TO A POINT; SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1065.00 FEET, A CENTRAL ANGLE OF 42°24'09", AND A RADIAL BEARING OF NORTH 48°29'43" EAST, THENCE NORTHWESTERLY ALONG THE ARC A DISTANCE OF 788.17 FEET TO A POINT; THENCE NORTH 00°53'09" EAST, A DISTANCE OF 179.72 FEET; THENCE SOUTH 89°21'54" EAST, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.33 ACRES MORE OR LESS.

SURVEYORS NOTES:

1. THIS SKETCH AND DRAWING HAVE BEEN PREPARED TO CONFORM WITH APPLICABLE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
2. THIS SKETCH IS FOR THE SOLE BENEFIT OF THE PARTIES NAMED HEREON AND FOR THE SPECIFIC PURPOSE NOTED, AND SHOULD NOT BE RELIED UPON BY ANY OTHER ENTITY, AND IS NOT TRANSFERABLE UNDER ANY CIRCUMSTANCES.
3. THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR, AND REPRODUCTION OF THIS DRAWING WITHOUT WRITTEN PERMISSION OF THE SURVEYOR IS HEREBY FORBIDDEN.
4. THIS SKETCH WAS PREPARED WITH THE BENEFIT OF OWNERSHIP AND ENCUMBRANCE REPORT PREPARED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY, ORDER NO. 6615464 DATED FEBRUARY 18, 2020. AND IS SUBJECT TO: AGREEMENT MEMORANDUM RECORDED IN OFFICIAL RECORDS BOOK 5876, PAGE 287 AND OFFICIAL RECORDS BOOK 8174, PAGE 2219.
5. THIS SKETCH WAS PREPARED FROM INFORMATION FURNISHED TO THE SURVEYOR BY THE CLIENT, AND MAY BE SUBJECT TO EASEMENTS OR LIMITATIONS EITHER RECORDED OR IMPLIED.
6. BEARINGS ARE BASED ON A ASSUMED BEARING OF SOUTH 89°21'51" EAST FOR THE NORTH LINE OF SECTION 19, TOWNSHIP 28, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, SHOWN AS BEING THE BASIS OF BEARINGS.

PREPARED FOR:

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS


DANIEL D. GARNER, PSM 6189
PROFESSIONAL SURVEYOR & MAPPER

PREPARED BY:

AAL LAND SURVEYING SERVICES, INC.

3970 MINTON ROAD, WEST MELBOURNE, FL 32904

PHONE: (321)768-8110 FAX: (321)952-9771 EMAIL: frontdesk@aalsurvey.com LICENSE BUSINESS: #6623

DRAWN BY: DANIEL D. GARNER	CHECKED BY: ANDREW W. POWSHOK	REVISION: COUNTY COMMENTS 04-01-20	SECTION 19, TOWNSHIP 28 SOUTH, RANGE 37 EAST
DATE: 02-20-2020	PROJECT # 40947	REVISION: COUNTY COMMENTS 03-31-20	
		REVISION: COUNTY COMMENTS 03-19-20	

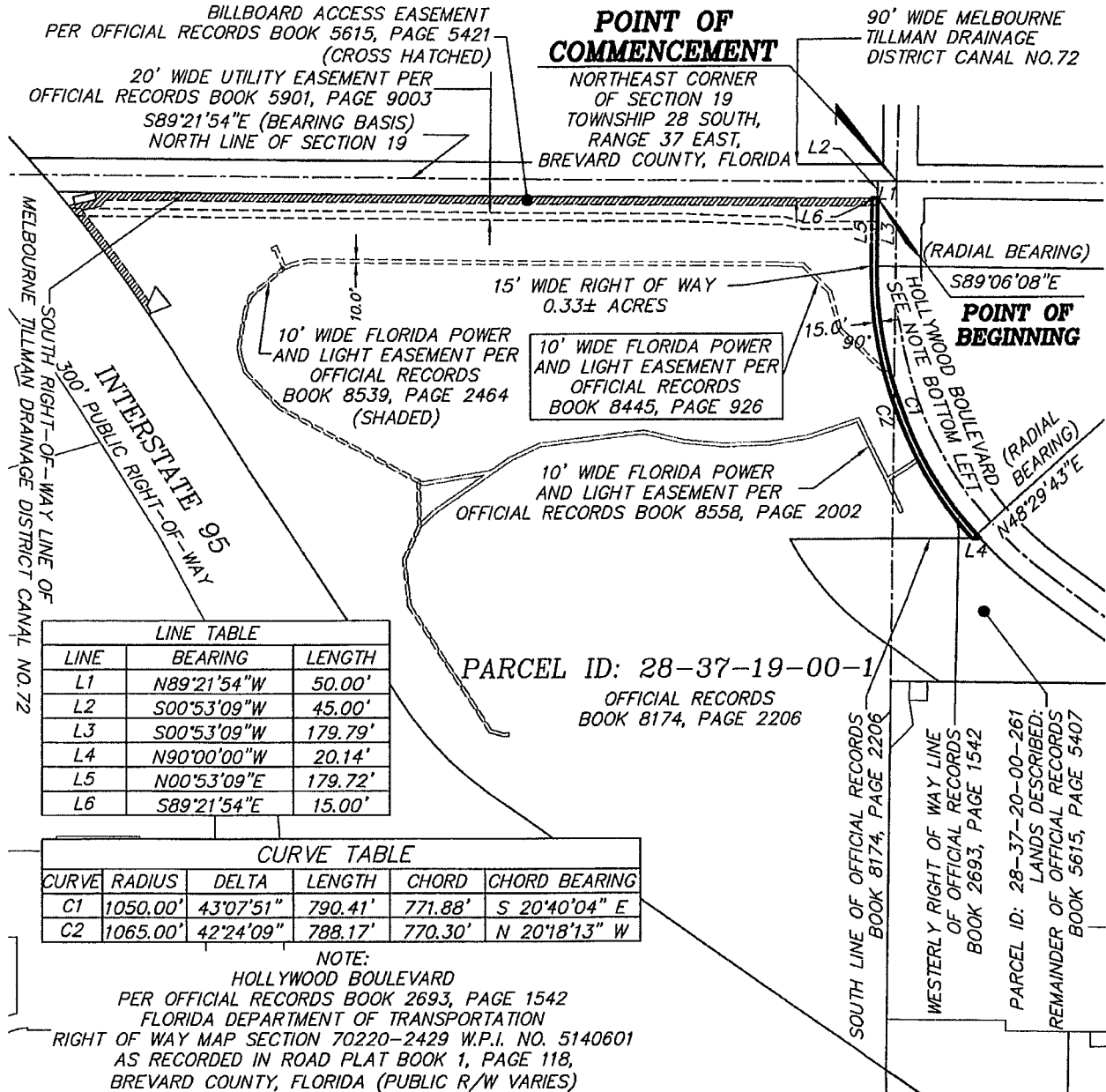
SKETCH OF DESCRIPTION

EXHIBIT "A"

PARCEL ID# 101

SHEET 2 OF 3
NOT VALID WITHOUT SHEETS 1-3
THIS IS NOT A SURVEY

PARENT PARCEL ID#: 28-37-19-00-1
PURPOSE: FEE SIMPLE RIGHT OF WAY



NORTH

PREPARED BY: **AAL LAND SURVEYING SERVICES, INC.**
3970 MINTON ROAD, WEST MELBOURNE, FL 32904
PHONE: (321)768-8110 FAX: (321)952-9771 EMAIL: frontdesk@aalsurvey.com

SCALE: 1"=400'

PROJECT # 40947

REVISION: COUNTY COMMENTS 04-01-20

REVISION: COUNTY COMMENTS 03-30-20

REVISION: COUNTY COMMENTS 03-19-20

SECTION 19,
TOWNSHIP 28 SOUTH,
RANGE 37 EAST

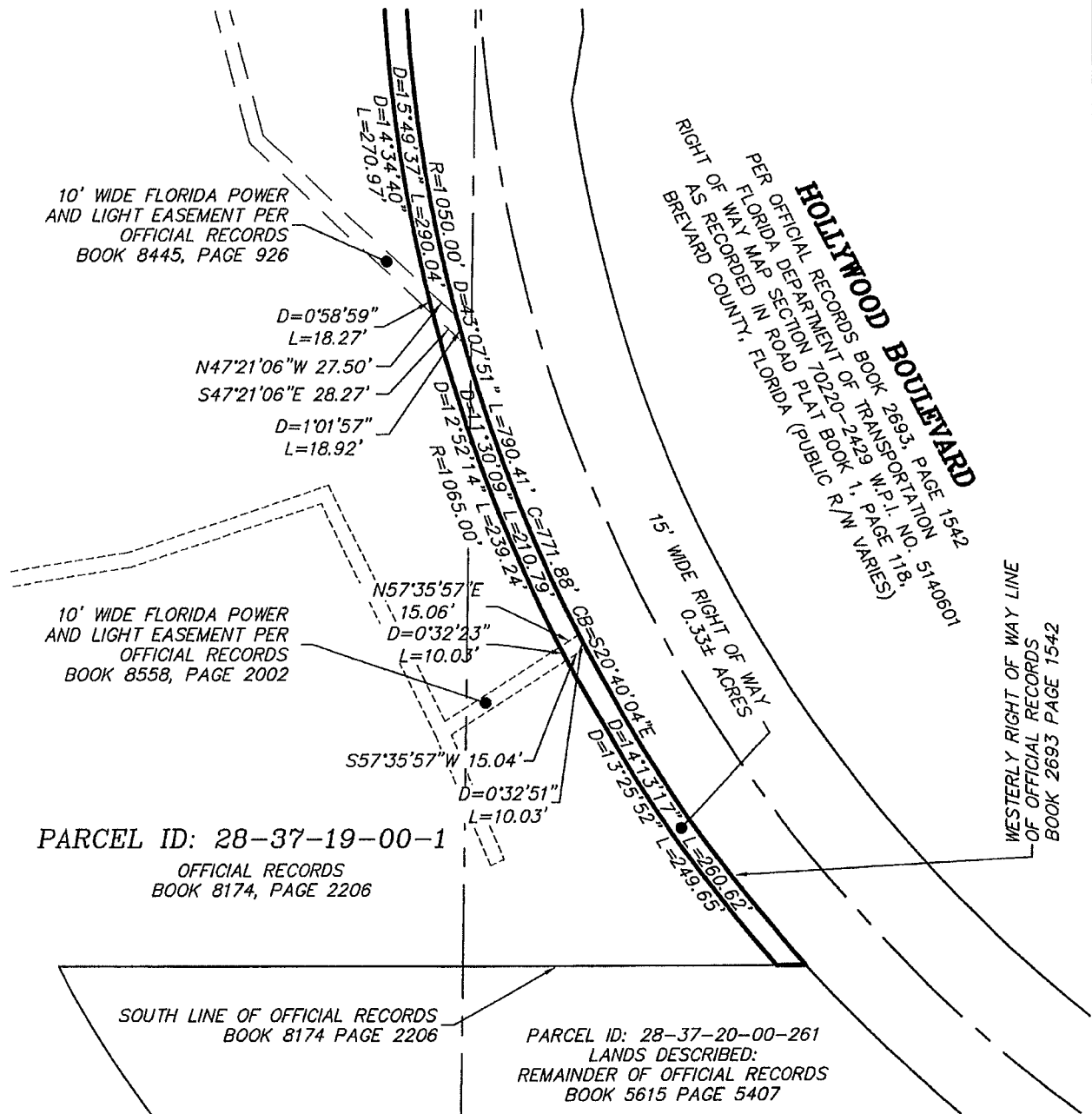
SKETCH OF DESCRIPTION

PARCEL ID# 101

PARENT PARCEL ID#: 28-37-19-00-1
PURPOSE: FEE SIMPLE RIGHT OF WAY

EXHIBIT "A"

SHEET 3 OF 3
NOT VALID WITHOUT SHEETS 1-3
THIS IS NOT A SURVEY



NORTH

PREPARED BY: **AAL LAND SURVEYING SERVICES, INC.**
3970 MINTON ROAD, WEST MELBOURNE, FL 32904
PHONE: (321)768-8110 FAX: (321)952-9771 EMAIL: frontdesk@aalsurvey.com

SCALE: 1"=100'

PROJECT # 40947

REVISION: COUNTY COMMENTS 04-01-20

REVISION: COUNTY COMMENTS 03-30-20

REVISION: COUNTY COMMENTS 03-19-20

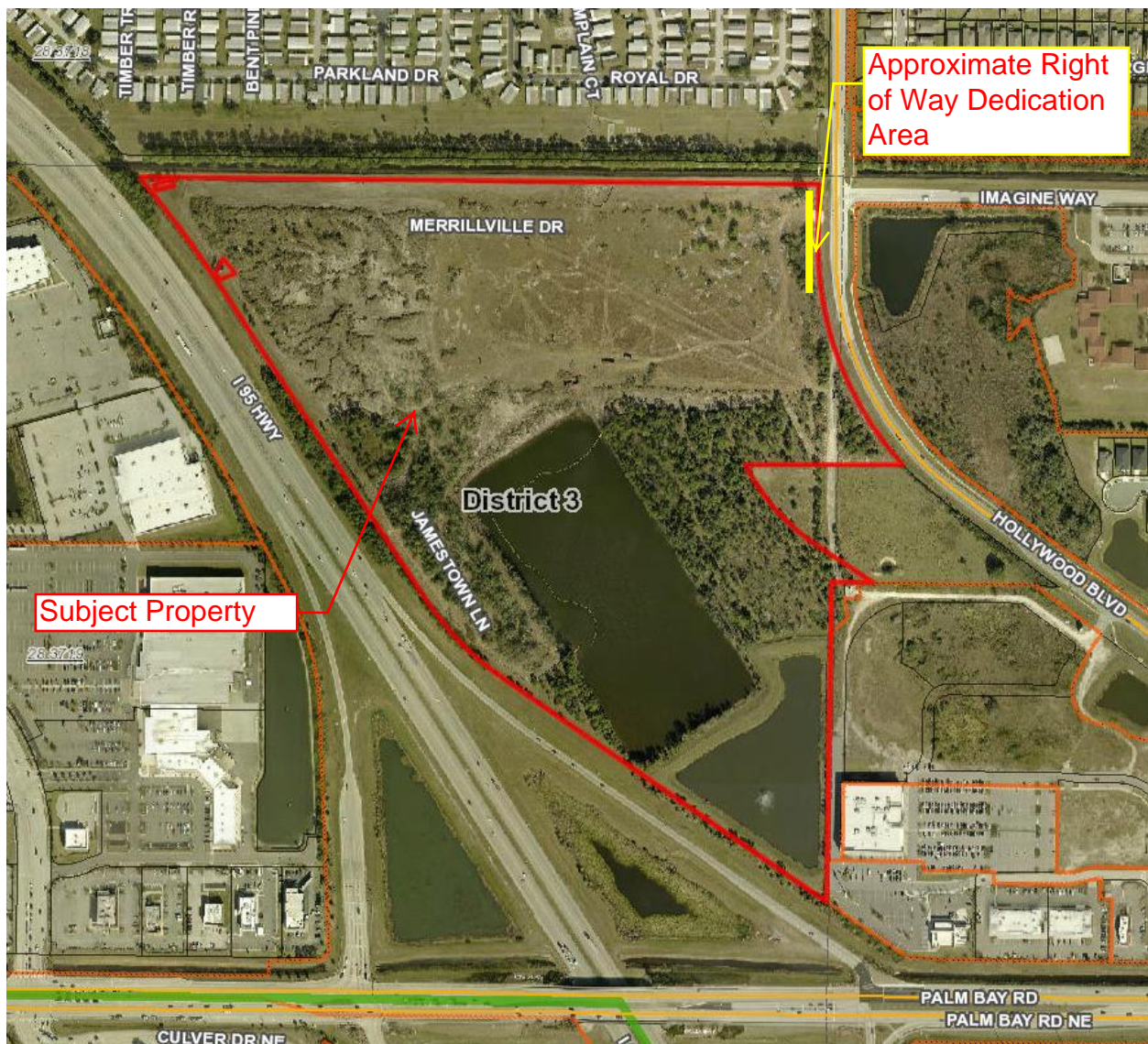
SECTION 19,
TOWNSHIP 28 SOUTH,
RANGE 37 EAST

LOCATION MAP

Section 19, Township 28 South, Range 37 East - District 3

PROPERTY LOCATION: North of Palm Bay Road, west of Hollywood Boulevard, along the east side of Interstate 95 in West Melbourne

OWNERS NAME: Mahaffey Associates West Melbourne, LLC





Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4

7/21/2020

Subject:

Approval Re: Assignment and Assumption of Right of Way Use Agreement (Modern Duran District) to the Central Viera Community Association, Inc. - District 4

Fiscal Impact:

None

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Assignment and Assumption of Right of Way Use Agreement (Modern Duran District) to the Central Viera Community Association, Inc.

Summary Explanation and Background:

On January 7, 2020, the Board approved the Right of Way Use Agreement for the Modern Duran District with The Viera Company, Inc. The Right of Way Use Agreement allowed for the installation of improvements, such as landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements along a portion of the public right-of-way Judge Fran Jamieson Way in Viera. The Right of Way Use Agreement contained an assignability provision that acknowledged upon completion of the installation of the improvements, The Viera Company would assign its rights, duties, and obligations to either a Community Association or Neighborhood Association. As such, The Viera Company desires to assign its rights, duties, and obligations to the Central Viera Community Association, Inc., which is a Community Association as defined in the Right of Way Use Agreement. Per the Right of Way Use Agreement, any assignment shall be by a written instrument executed by The Viera Company, the assignee, and the County. Upon execution of the assignment, The Viera Company will be released from all obligations and duties, and the County shall look to the assignee for the performance of the obligations and duties of the Right of Way Use Agreement. Per Administrative Order 29, the County Attorney's Office and Risk Management have reviewed and approved the Assignment and Assumption of the Right of Way Use Agreement (Modern Duran District).

Clerk to the Board Instructions:

Please return the fully executed Assignment and Assumption of the Right of Way Use Agreement (Modern Duran District) to the Public Works Department.



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: N/A		2. Amount: 0.00
3. Fund/Account #: N/A		4. Department Name: Public Works
5. Contract Description: Assignment of Right-of-Way Use Agreement re: Modern Duran		
6. Contract Monitor: Jeanette Scott		8. Contract Type: USE AGREEMENT
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Thomas-Wood, Tammy

Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevardfl.gov
Date: 2020.06.30 10:12:51 -0400

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.06.30 08:53:33 -04'00'

County Attorney

☒
☐

Brewer, Jad

Digitally signed by Brewer, Jad
Date: 2020.06.30 09:14:36 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**ASSIGNMENT AND ASSUMPTION
OF
RIGHT OF WAY USE AGREEMENT
(Modern Duran District)**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT OF WAY USE AGREEMENT (this “Assignment”) is dated as of June 19, 2020 (the “Effective Date”) and is between THE VIERA COMPANY, a Florida corporation (“Assignor”), as assignor, and CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (“Assignee”), as assignee. BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the “County”), hereby joins in the execution of this Assignment.

RECITALS

A. Assignor and the County entered into that certain Right of Way Use Agreement dated January 7, 2020 relating to Assignor’s installation of landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements along a portion of public right-of-way Judge Fran Jamieson Way in Viera, Florida more particularly described in the agreement, with a copy of that agreement attached hereto as **Exhibit A** and incorporated herein by this reference (the “Agreement”); and

B. Assignor has completed the installation of the improvements to be installed by Assignor under the Agreement, and now desires to assign its rights, duties, and obligations arising from and after the Effective Date under the Agreement to Assignee as intended under the Agreement.

Now, therefore, in consideration of Ten and 00/100 Dollars (\$10.00), the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by Assignor and Assignee, Assignor and Assignee hereby agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into this assignment by this reference.

2. Assignment and Assumption. Assignor hereby assigns to Assignee all of Assignor’s rights and interest under the Agreement to Assignee that arise from and after the Effective Date. Further, Assignor hereby delegates to Assignee all of Assignor’s duties and obligations under the Agreement that arise from and after the Effective Date. Assignee hereby accepts the above-referenced assignment of rights and delegation of duties and obligations of Assignor under the Agreement and assumes all of the rights, duties, and obligations of Assignor under the Agreement that arise from and after the Effective Date. The foregoing assignment and delegation by Assignor to Assignee is in accordance with Section 13 of the Agreement. By its joinder in the execution of this Assignment, the County hereby consents to such assignment and delegation by Assignor to Assignee.

3. Notices. Each notice, request, demand, and other communication delivered by a party under the Agreement to Assignee, as assignee of the Agreement, shall be addressed to Assignee at the following address unless otherwise advised by Assignee in writing:

Central Viera Community Association, Inc.
Attention: Ms. Eva Rey, President
7380 Murrell Road, Suite 201
Viera, FL 32940

4. Partial Invalidity. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by applicable law.

5. Governing Law; Submission to Jurisdiction. This Assignment shall be governed by, and construed in accordance with, the law of the State of Florida applicable to contracts made within and to be performed within the State of Florida. The parties hereto agree to submit to personal jurisdiction in the State of Florida in any action or proceeding arising out of this Assignment and, in furtherance of such agreement, the parties hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the parties in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of Florida. In the event of any action to enforce the terms of this Assignment, each party shall bear its own attorney's fees and any trial shall be a non-jury trial.

6. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any counterpart delivered by electronic transmission shall be deemed an original counterpart from the sending party.

IN WITNESS WHEREOF, Assignor and Assignee have signed this Assignment as of the date set forth on the first page of this Assignment:

WITNESSES:

Benjamin E. Wilson
Name: Benjamin E. Wilson

Charlene R. Spangler
Name: Charlene R. Spangler

ASSIGNOR:

THE VIERA COMPANY,
a Florida corporation

By: [Signature]
Name: Todd J. Pokrywa
Title: President
Date: June 19, 2020

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ✓ physical presence or online notarization this 19th day of June 2020 by TODD J. POKRYWA as PRESIDENT of THE VIERA COMPANY, a Florida corporation, on behalf of the corporation. He is personally known to me.



BENJAMIN E. WILSON
Commission # GG 146829
Expires October 10, 2021
Bonded Thru Budget Notary Services

Benjamin E. Wilson
Print Name: Benjamin E. Wilson
Notary Public, State of Florida
Commission No.: GG 146829
My Commission Expires: 10/10/2021

(SIGNATURE OF ASSIGNEE IS ON THE FOLLOWING PAGE.)

WITNESSES:Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNEE:CENTRAL VIERA COMMUNITY
ASSOCIATION, INC.,
a Florida not-for-profit corporationBy: Eva M. Rey

Name: Eva M. Rey

Title: President

Date: June 19, 2020

STATE OF FLORIDA)

COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ✓ physical presence or online notarization this 19th day of June 2020 by EVA M. REY, as PRESIDENT of CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. She is personally known to me.



BENJAMIN E WILSON
Commission # GG 146829
Expires October 10, 2021
Bonded thru Budget Notary Services

Benjamin E. WilsonPrint Name: Benjamin E. Wilson

Notary Public, State of Florida

Commission No.: GG 146829My Commission Expires: 10/10/2021

(JOINDER BY THE COUNTY IS ON THE FOLLOWING PAGE.)

JOINDER

The County hereby joins in the execution of this Assignment for the purposes of consenting to the terms and conditions of this Assignment.

ATTEST:

COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY FLORIDA,

Scott Ellis, Clerk

Approved as to legal form and content:

Assistant County Attorney

By: Bryan Andrew Lober, Chair

As approved by the Board on: July 21, 2020

Exhibit A
The Agreement

F:\shared\COMMUNITY MANAGEMENT\County Right of Way Use Agreements\Assignment to Central Viera Community Association (January 7, 2020 Agreement for Judge Fran Jamieson from Stadium Parkway past Modern Duran).docx

BREVARD County

BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us



January 8, 2020

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

RE: Item F.3, Right-of-Way Use Agreement for the Modern Duran District with The Viera Company

The Board of County Commissioners, in regular session on January 7, 2020, authorized the Chair to execute the Right-of-Way Use Agreement with The Viera Company to permit improvements to be installed and maintained in the Modern Duran District. Enclosed is a fully-executed copy of the Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Contracts Administration

RIGHT-OF-WAY USE AGREEMENT (Modern Duran District)

This Right-Of-Way Use Agreement (this "Agreement"), made and entered into this 7th day of January, 2020 by and between Brevard County, Florida, a political subdivision of the State of Florida (the "County"), and The Viera Company, a Florida corporation ("The Viera Company"), whose principal address is 7380 Murrell Road, Suite 201, Viera, Florida 32940.

RECITALS

Whereas, The Viera Company is the declarant under that certain Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Modern Duran District recorded on February 3, 2016 in Official Records Book 7542, Page 2163, of the Public Records of Brevard County, Florida, as amended from time to time (the "Neighborhood Declaration"), which governs that certain residential neighborhood known as the Modern Duran District (the "District");

Whereas, the public right-of-way(s) adjacent to the District known as Judge Fran Jamieson Way, as set forth in Attachment "A" attached hereto and incorporated herein by this reference (the "Public Right-of-Way") has been dedicated to Brevard County, Florida;

Whereas, The Viera Company desires to improve the Public Right-of-Way by installing improvements, which may consist of, but are not limited to, improvements for landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements pursuant to plans and specifications approved by the County and further described below;

Whereas, the County pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of a public right-of-way for purposes which do not conflict with the interests of the public or are in the interests of the public; and

Whereas, the County has determined that use of the Public Right-of-Way by The Viera Company for the installation, operation, maintenance, repair and improvement of such improvements to the Public Right-of-Way pursuant to this Agreement promotes the public interest.

Now therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Recitals

The above recitals are true and correct and incorporated into this Agreement by this reference.

2. Definitions

The following terms used in this Agreement shall have the meaning given to such terms below:

- a) Agreement: shall mean this Right-of-Way Use Agreement (Modern Duran District).
- b) Association: shall mean the homeowner's association to which The Viera Company elects to assign its rights, and delegates its duties and obligations to, under this Agreement as permitted under Paragraph 13 of this Agreement, with the Association to be either the Community Association or the Neighborhood Association, as to be determined by The Viera Company in its sole and absolute discretion.
- c) Community Association: shall mean Central Viera Community Association, Inc., a Florida not-for-profit corporation (the "Community Association"), as more particularly described in that certain Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Central Viera Community recorded in Official Records Book 3409, Page 624, of the Public Records of Brevard County, Florida, as may be amended from time to time (the "Community Declaration").
- d) County: shall mean Brevard County, Florida, a political subdivision of the State of Florida.
- e) Declaration: shall mean either the Community Declaration, if the Association is the Community Association pursuant to Paragraph 13 of this Agreement, or the Neighborhood Declaration, if the Association is the Neighborhood Association pursuant to Paragraph 13 of this Agreement, as applicable.
- f) Designated Premises: shall mean that portion of the Public Right-of-Way more particularly described in Attachment "A" attached hereto and incorporated herein by this reference, where the Improvements will be installed and maintained, with the Designated Premises to be more particularly described in the Plans as approved by the County .
- g) Improvements: shall mean those certain improvements installed or to be installed by The Viera Company within the Designated Premises in accordance with the Plans and maintained by The Viera Company in accordance with the provisions of this Agreement as approved by the County pursuant to any Right-of-Way Permit issued by the County.
- h) Neighborhood Association: shall mean Modern Duran District Association, Inc., a Florida not-for-profit corporation (the "Neighborhood Association"), as more particularly described in the Neighborhood Declaration.
- i) Neighborhood Declaration: shall have the meaning given to such term in the first recital set forth above.
- j) Plans: shall mean those certain plans for the construction and installation of Improvements which have been approved by The Viera Company and the County as part of a Right-of-Way Permit.
- k) Prompt or Promptly: For purposes of Paragraph 8, the term "promptly" shall mean no later than fourteen days after The Viera Company receives written notice of the need for

maintenance, repairs, or replacements to the applicable Improvements (as may be extended on a day-by-day basis for acts of force majeure beyond The Viera Company's control); however, to the extent such maintenance, repairs, or replacements cannot reasonably be completed within fourteen days, the term "promptly" shall mean The Viera Company shall commence such maintenance, repairs, or replacements within such initial fourteen day period and shall diligently work to complete such maintenance, repairs, or replacements. For purposes of Paragraph 10, the term "promptly" or "prompt" shall mean no later than fourteen days after The Viera Company receives actual notice of the existence of a hazardous condition, or a condition in need of maintenance as required hereunder, at the Designated Premises.

l) Public Right-of-Way: shall have the meaning given to such term in the second recital set forth above.

m) Right-of-Way Permit: shall mean the official written approval to begin construction or installation of Improvements according to the application, plans, specifications and conditions approved by the County.

n) The Viera Company: shall mean The Viera Company, a Florida corporation.

3. Construction and Maintenance of Property

During the term of this Agreement, The Viera Company hereby agrees to construct and maintain the Improvements within the Designated Premises in the manner described in this Agreement and as permitted by the County. Improvements shall be constructed and installed in such a manner so as to not cause damage to or interfere with any County improvements or facilities. Any such damage to County improvements or facilities shall be remedied immediately at no cost to the County.

4. Term

The initial term of this Agreement shall be twenty years commencing with the date of the execution of this Agreement by the County and The Viera Company, and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with Paragraph 15 Termination herein.

5. Use of Designated Premises

During the term of this Agreement, The Viera Company shall use the Designated Premises only for construction and installation of the Improvements and related maintenance thereto. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the Designated Premises as part of the Improvements shall be for decorative or informational purposes only and not for human occupancy, nor shall such Improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth for the Improvements upon the Designated Premises shall be the only use consented to by the County, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately terminate this Agreement.

6. Improvements

All Improvements permitted and installed upon the Designated Premises by The Viera Company shall be maintained by The Viera Company on the Designated Premises during the term of this Agreement in accordance with this Agreement and any County issued Right-of-Way Permit. It is hereby agreed and understood that any Improvements placed on or constructed on the Designated Premises and permanently attached thereto, shall remain the property of The Viera Company and that The Viera Company retains the right to remove such improvement within sixty days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such Improvements are not removed within sixty days of termination, the Improvements shall become the property of the County, and the County may remove the Improvements. To the extent the County elects to remove any such Improvements, The Viera Company shall reimburse the County for the cost of removal within thirty days of receipt of an invoice for such removal expenses.

7. Utilities

The Viera Company shall pay all charges for electrical service and other utility services supplied to The Viera Company at the Designated Premises for the Improvements during the term of this Agreement.

8. Repairs and Maintenance

During the term of this Agreement, The Viera Company shall, at its own expense, maintain the Designated Premises and all Improvements on the Designated Premises in accordance with this Agreement, any County issued Right-of-Way Permit and all applicable County and Florida Department of Transportation current maintenance and safety requirements and as updated and make all necessary repairs and replacements to the Designated Premises and/or the Improvements. Such maintenance, repairs and replacements shall be made promptly as and when necessary. Notification of the need for such repair and/or maintenance may be given to The Viera Company by written or electronic communication.

9. Illegal, Unlawful or Improper Use

The Viera Company shall make no unlawful, improper, immoral or offensive use of the Designated Premises, nor will The Viera Company use the Designated Premises or allow use of the Designated Premises for any purposes other than that hereinabove set forth. Failure of The Viera Company to comply with this provision shall be considered a material default under this Agreement. In the event any of the Improvements are deemed a traffic safety hazard by the County or the Florida Department of Transportation, such use shall be deemed an improper use and this Agreement shall be subject to immediate termination.

10. Indemnification and Insurance

Except where limited by law, The Viera Company agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the Designated Premises or any of the Improvements thereon or any equipment or fixtures used in connection with the Designated Premises by The Viera Company or its employees or independent contractors. The Viera Company agrees that it will, at its own

expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with The Viera Company's use of the Designated Premises pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. The Viera Company shall include in any contract for work upon or involving the Designated Premises that the contractor shall indemnify and hold harmless the County from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract. The parties acknowledge specific consideration has been exchanged for the provision.

The Viera Company further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability Insurance insuring The Viera Company against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Designated Premises and the Improvements thereon. Such policies of insurance shall insure The Viera Company in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida, 32940, within ten days of the date of execution of this Agreement by The Viera Company and the County and annually upon insurance renewal. The County shall be named as an additional insured on the policy that The Viera Company secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies.

The Viera Company shall also be required to include in any contract for work upon or involving the Designated Premises that the contractor is required to maintain, without cost or expense to the County, the following types of insurance. The policy limits required are to be considered minimum amounts:

- General Liability Insurance in an amount not less than one million dollars combined single limit for each occurrence and to include coverage for Explosion, Collapse, Underground (XCU) hazards.
- Workers' Compensation Insurance (for statutory limits) as required by Florida Statutes, Chapter 440.

Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

The Viera Company shall notify the County promptly in writing of any hazardous condition existing on or about the Designated Premises.

All Improvements or personal property constructed or placed on or about the Designated Premises by The Viera Company or its employees or independent contractors shall be at the risk of The Viera Company, and the County shall not be liable for any damage or loss to any Improvements or personal property located thereon for any cause whatsoever. The Viera Company agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover The Viera Company's interests therein. At the time of execution of this Agreement, any existing improvements installed on the Designated Premises will be the maintenance responsibility of The Viera Company. In the event any pre-existing improvements cause damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, The Viera Company will be responsible for prompt repair to such County property. If The Viera Company fails to promptly repair the damage, The Viera Company will pay the County all costs incurred by the County to repair the damage.

11. Right of Entry

It is expressly stipulated that this Agreement is a license for permissive use only and that the construction within and/or upon public property pursuant to this Agreement shall not operate to create or vest any property right in said holder. This Agreement does not relieve The Viera Company of local or other jurisdictional requirements. The County or its agents may enter in and on the Designated Premises at any time for any purpose, including inspecting such property or performing other duties of the County as are required by law or by the terms of this Agreement.

12. Compliance with Statutes

The Viera Company shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Designated Premises for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Designated Premises during the term of the Agreement.

13. Binding Effect; Assignability

This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. Except as otherwise provided herein below, The Viera Company shall not assign this Agreement or any portion thereof of The Viera Company's rights, obligations, or duties hereunder to any party without the prior written consent of the County. However, the County and The Viera Company acknowledge that upon completing the initial installation of the Improvements upon the Designated Premises, it is intended that all of the rights, obligations and duties of The Viera Company under this Agreement relating to the Improvements on the Designated Premises will be assigned by The Viera Company to either the Community Association or a Neighborhood Association (with such assignee association being the "Association" for purposes of this Agreement as to the assigned rights and obligations), as to be determined by The Viera Company in its sole and absolute discretion, but subject to the County's written consent. Any such assignments shall be by a written instrument executed with the formality of a deed on behalf of The Viera Company assigning such rights, obligations and duties to the assignee, and on behalf of the assignee assuming such rights, obligations and

duties. Such assignments shall also set forth the address of the assignee for purposes of receiving notices under this Agreement in accordance with Paragraph 16 herein below. Upon the execution of such assignments by The Viera Company, the assignee, and the County, and its delivery to the County, the County agrees that The Viera Company shall be released from all obligations and duties hereunder as to the assigned obligations and duties and that the County shall thereafter look solely to the applicable assignee for the performance of such obligations and duties.

14. Independent Contractor

The Viera Company shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make The Viera Company or any of its agents or employees to be the agent, employee or representative of the County.

15. Termination

This Agreement may be terminated with or without cause by either party upon sixty days' written notice thereof to the other party; provided, however, that upon termination, The Viera Company or, if this Agreement or any portion thereof has been assigned as permitted hereunder, then the applicable assignees of this Agreement, shall, at the request of the County, remove all Improvements to the Designated Premises, or, in the alternative, reimburse the County for the cost of such removal. In the event this Agreement is terminated and the County assumes ownership of the Improvements within the Public Right-of-Way, the County does not assume maintenance responsibility unless expressly provided in writing. Any maintenance performed by the County will not constitute an assumption of maintenance responsibility as may be otherwise assigned by Florida Statute or County Code.

16. Notice; Notice of Breach

Notice under this Agreement shall be given to the County at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940 with a copy to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida 32940. Notice under this Agreement shall be given to The Viera Company at 7380 Murrell Road, Suite 201, Viera, Florida 32940 or by email to brenton.albertson@duda.com and vieralegal@duda.com.

In the event the County determines The Viera Company or any assignee has breached any term or provision of this Agreement, the County shall provide written notice of such breach to breaching party and the breaching party shall have thirty days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonable be cured within such thirty day period, then the breaching party shall have such longer period to cure the breach as is reasonably necessary provided, however, that if the breaching party commences reasonable action to remedy the breach within such thirty day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

17. Right to Audit Records

In the performance of this Agreement, The Viera Company and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with

generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of The Viera Company or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to The Viera Company or any assignee not less than five business days advance notice and shall be respectively retained by The Viera Company and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by The Viera Company or any assignee or provided to The Viera Company or any assignee under the terms of this Agreement, are public records and The Viera Company and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

18. Waiver

The waiver by the County of any of The Viera Company's or any assignee's respective obligations or duties under this Agreement shall not constitute a waiver of any other respective obligation or duty of The Viera Company or any assignee under this Agreement.

19. Entirety and Modifications

This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between the County and The Viera Company as to the subject matter of this Agreement. This Agreement may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein. Attachment A, which is intended to set forth the Designated Premises of this Agreement, may be modified as Improvements are approved pursuant to the terms of this Agreement. This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto.

20. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. Attorney's Fees and Venue

In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

22. Construction of Agreement

The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

Done, ordered and adopted in Regular Session this 7 day of January, 2020.

Attest:

Board of County Commissioners
of Brevard County, Florida



Scott Ellis, Clerk



Bryan Lober, Chair

As approved by the Board on 1/7/2020

Approved as to legal form and content:




Assistant County Attorney

The Viera Company, a Florida corporation

K.P. Prosser
Printed name: KAREN P. PROSSER

Mary Ellen McKibben
Printed name: Mary Ellen McKibben


Name: Todd J. Pokrywa
Title: President



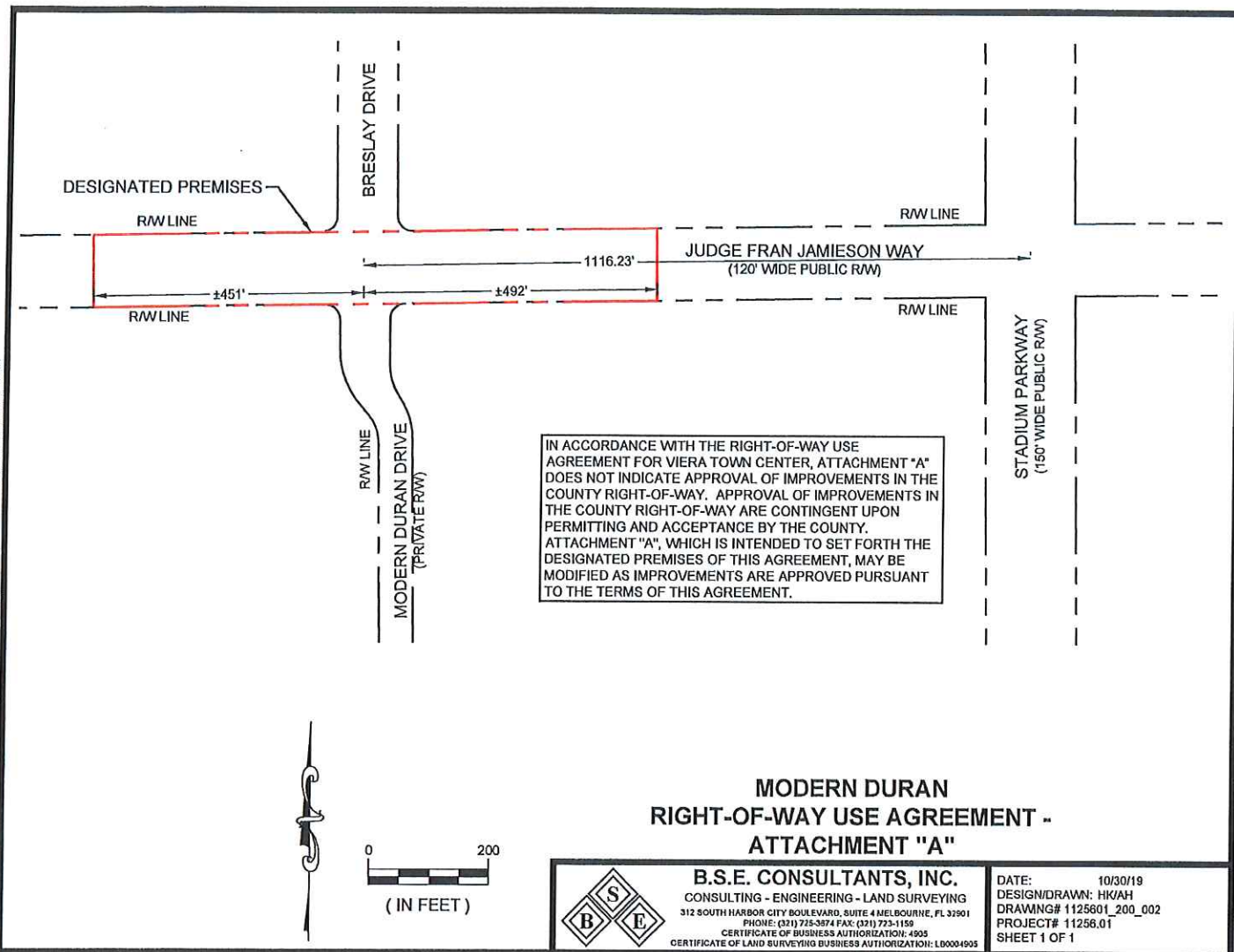
State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 18th day of December, 2019, by Todd J. Pokrywa, as President of The Viera Company, a Florida corporation, on behalf of the corporation, who is personally known to me.

Mary Ellen McKibben
Notary Public
Mary Ellen McKibben
Printed Name



H:\Projects Folder\112566.01\Drawings\1125601_200_002.dwg November 14, 2019 8:16:04 AM AH





Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5

7/21/2020

Subject:

Approval Re: Conveyance of Two Perpetual Easements and Two Resolutions from Brevard County to the Florida Department of Transportation (FDOT) for the Northerly Segment of St. Johns Heritage Parkway Project - District 5

Fiscal Impact:

None

Dept/Office:

Public Works Department / Land Acquisition

Requested Action:

It is requested that the Board of County Commissioners: 1) approve, accept, and authorize the Chair to execute the Perpetual Easement (Access) and Resolution, and 2) approve, accept, and authorize the Chair to execute the Perpetual Easement (Flood Plain Compensation) and Resolution

Summary Explanation and Background:

The subject property is located in Section 34, Township 27 South, Range 36 East, west of I-95 along the west side of St. Johns Heritage Parkway.

The Board of County Commissioners, in regular session on March 21, 2017, executed a Memorandum of Agreement with FDOT related to the Northerly Segment of the St. Johns Heritage Parkway Project. The Agreement contained a graphic representation of various parcels to be acquired by the County and by FDOT. The parcel known as the Welchwood parcel was to be acquired by the County to meet the needs of both County and FDOT for floodplain compensation. FDOT requires the conveyance of an easement from the County that is sufficient to allow FDOT a flowage of an estimated 76.8 acre-feet floodplain volume, together with an access easement. The Perpetual Easements will fulfill the terms of the Agreement.

The Resolutions are pursuant to Section 125.38, Florida Statute authorizing the conveyance of County property.

The User Department is in agreeance with this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, please contact Public Works Department (321-617-7202) to make delivery arrangements for the original executed Perpetual Easements (2) and Resolutions (2).

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: APPROVAL RE: CONVEYANCE OF TWO PERPETUAL EASEMENTS AND TWO RESOLUTIONS FROM BREVARD COUNTY TO THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR THE NORTHERLY SEGMENT OF ST. JOHNS HERITAGE PARKWAY PROJECT – DISTRICT 5.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8336 (58336)

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor		_____	<u>7-9-2020</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>7-9-2020</u>

AGENDA DUE DATE: July 14, 2020 for the July 21, 2020 Board meeting

June 3, 2020
This instrument prepared by
Marika Tremblay
Under the direction of
DANIEL L. MCDERMOTT, ATTORNEY
Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720-6834

PARCEL NO. 812.1A
SECTION 70220
F.P. NO. 426905 3
STATE ROAD 9
COUNTY BREVARD

PERPETUAL EASEMENT

THIS EASEMENT made this 21 day of July, 2020, by BREVARD COUNTY, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION its successors and assigns, grantee.

WITNESSETH: That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual easement for the purpose of nonexclusive access, in, over, under, upon and through the following described land in Brevard County, Florida, viz:

SEE ATTACHED SKETCH OF DESCRIPTION

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever, and the grantor will defend the title to said lands against all persons claiming by, through or under said grantor.

PARCEL NO. 812.1A
SECTION 70220
F.P. NO. 426905 3
PAGE 2

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson (or Vice-Chairperson) of said Board, the day and year aforesaid.

ATTEST: _____
Scott Ellis, Clerk to the Board
Clerk (or Deputy Clerk)

BREVARD COUNTY, FLORIDA,
By Its Board of County
Commissioners

By: _____
Bryan Andrew Lober, Chair
Its Chairperson
(or Vice-Chairperson)

ADDRESS OF GRANTOR:
2727 Judge Fran Jamieson Way
Viera, FL 32940

LEGAL DESCRIPTION

EXHIBIT "A"
SHEET 1 OF 2
NOT VALID WITHOUT
SHEET 2 OF 2

SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST
BREVARD COUNTY PARCEL ID: 27-36-34-00-502
OWNER NAME: BREVARD COUNTY

PREPARED BY DRMP, INC.



A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8184, PAGE 1303, BEING THAT PART OF PARCEL 107 OF EXHIBIT "A", LOCATED IN THE SOUTHWEST 1/4 (ONE-QUARTER) OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 (ONE-QUARTER) OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST; THENCE RUN SOUTH 89°27'21" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 (ONE-QUARTER), A DISTANCE OF 628.84 FEET TO A POINT ON THE CENTERLINE OF THE PROPOSED ST. JOHNS HERITAGE PARKWAY, BEING A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 2864.79 FEET AND A CHORD WHICH BEARS NORTH 28°46'44" EAST, A DISTANCE OF 178.08 FEET; THENCE DEPARTING SAID SOUTH LINE AND ALONG SAID CENTERLINE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°33'44", FOR A LENGTH OF 178.11 FEET TO A POINT OF TANGENCY; THENCE NORTH 30°33'36" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 746.02 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1909.86 FEET; THENCE ALONG SAID CENTERLINE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°04'28" FOR A LENGTH OF 402.48 FEET TO THE END OF SAID CURVE; THENCE NORTH 71°30'52" WEST, DEPARTING SAID CENTERLINE, A DISTANCE OF 105.00 FEET TO THE WESTERLY RIGHT OF WAY LINE AND THE POINT OF BEGINNING; THENCE ALONG A CURVE THROUGH A CENTRAL ANGLE OF 01°05'29" FOR A LENGTH OF 34.38 FEET HAVING A RADIUS OF 1804.86 FEET, A CHORD BEARING OF SOUTH 19°01'53" WEST AND A CHORD DISTANCE OF 34.38 FEET; THENCE NORTH 70°25'22" WEST, A DISTANCE OF 35.91 FEET; THENCE SOUTH 89°24'02" WEST, A DISTANCE OF 394.90 FEET; THENCE NORTH 00°50'03" WEST, A DISTANCE OF 20.00 FEET; THENCE NORTH 89°24'02" EAST, A DISTANCE OF 440.24 FEET TO THE POINT OF BEGINNING.

CONTAINING 8971 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST, AS BEING SOUTH 89°27'21" WEST.
2. THE PURPOSE OF THIS LEGAL DESCRIPTION ACCOMPANIED BY A SKETCH OF DESCRIPTION IS TO PROVIDE A GEOGRAPHICAL DESCRIPTION OF REAL PROPERTY FOR THE PURPOSES OF IDENTIFYING THE PROPERTY FOR LEGAL TRANSACTIONS.
3. THE SKETCH OF DESCRIPTION SHOWN ON SHEET 2 OF 2 HEREIN, DOES NOT CONSTITUTE A BOUNDARY SURVEY.
4. THIS SKETCH AND DESCRIPTION OR THE COPIES THEREOF, EXCEPT THOSE WITH ELECTRONIC SIGNATURE AND ELECTRONIC SEAL ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND EMBOSSED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

 TEGAN DESMOND, PSM FLORIDA REGISTRATION No. LS 6083	ST. JOHNS HERITAGE PARKWAY BREVARD COUNTY, FLORIDA				RIGHT OF WAY PARCEL SKETCH	
	PARCEL 812A					 SKETCH PREPARED BY DRMP ENGINEERS • SURVEYORS • PLANNERS • SCIENTISTS 941 LAKE BALDWIN LANE ORLANDO, FLORIDA 32814 (407) 896-0594 L.B. No. 2648
	DRAWN	TD	05/27/20	DATA SOURCE: N/A	SCALE: N/A	
	CHECKED	FL	05/27/20	DRMP PROJECT: 06-0809.008		

SKETCH OF DESCRIPTION

SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST
BREVARD COUNTY PARCEL ID: 27-36-34-00-502
OWNER NAME: BREVARD COUNTY

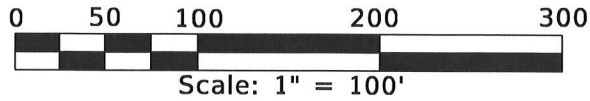


EXHIBIT "A"
SHEET 2 OF 2
NOT VALID WITHOUT
SHEET 1 OF 2



HERITAGE LAKES OF WEST
MELBOURNE, INC.
PARCEL ID: 27-36-34-00-500
O.R.B. 2982, PG. 931

CURVE
CONCAVE
NORTHWESTERLY
 $\Delta=01^{\circ}05'29''$
 $L=34.38'$
 $R=1,804.86'$
 $CH=34.38'$
 $CB=N19^{\circ}01'53''E$

N. LINE OF THE S. 1/2 OF THE S.W. 1/4 OF SEC. 34

$N00^{\circ}50'03''W$
20.00'

$N89^{\circ}24'02''E$ 440.24'

$S89^{\circ}24'02''W$ 394.90'

$N70^{\circ}25'22''W$ 35.91'

PROPOSED WESTERLY R/W LINE

CURVE
CONCAVE
NORTHWESTERLY
 $\Delta=12^{\circ}04'28''$
 $L=402.48'$
 $R=1,909.86'$
 $CH=401.74'$
 $CB=N24^{\circ}31'22''E$

(RADIAL)
 $N71^{\circ}30'52''W$
105.00'

NOT PLATTED

S.E. 1/4
SEC. 34

E. LINE OF
THE S.W. 1/4
OF SEC. 34

$N30^{\circ}33'36''E$
746.02'

PROPOSED ST. JOHNS
HERITAGE PARKWAY

O.R.B. 8184, PG. 1303
PARCEL ID: 27-36-34-00-502

SW 1/4 SEC. 34

CURVE CONCAVE
SOUTHEASTERLY
 $\Delta=03^{\circ}33'44''$
 $L=178.11'$
 $R=2,864.79'$
 $CH=178.08'$
 $CB=N28^{\circ}46'44''E$

S. LINE OF THE S.W. 1/4 OF SEC. 34

TOWNSHIP 27 SOUTH
TOWNSHIP 28 SOUTH

SEC.3-T28S-R36E

FLORIDA INDIAN RIVER
LAND COMPANY SUBDIVISION
(P.B. 2, PG. 80)

POINT OF COMMENCEMENT
S.E. CORNER OF THE S.W. 1/4 OF
SEC.34-T27S-R36E

THIS SKETCH IS NOT A SURVEY

LEGEND

Δ	=	CENTRAL ANGLE
CB	=	CHORD BEARING
CH	=	CHORD DISTANCE
ID	=	IDENTIFICATION
L	=	LENGTH
L.B.	=	LICENSED BUSINESS
No.	=	NUMBER
O.R.B.	=	OFFICIAL RECORDS BOOK
\overline{PL}	=	PROPERTY LINE
P.B.	=	PLAT BOOK
PC	=	POINT OF CURVATURE
PG.	=	PAGE
POC	=	POINT ON CURVE
PT	=	POINT OF TANGENCY
R	=	RADIUS
R/W	=	RIGHT OF WAY
SEC.	=	SECTION
T	=	TOWNSHIP

ST. JOHNS HERITAGE PARKWAY
BREVARD COUNTY, FLORIDA

RIGHT OF WAY
PARCEL SKETCH

PARCEL 812A

SKETCH PREPARED BY

DRMP
ENGINEERS • SURVEYORS • PLANNERS • SCIENTISTS
941 LAKE BALDWIN LANE
ORLANDO, FLORIDA 32814
(407) 896-0594
L.B. No. 2648

REVISION			BY			DATE			CHECKED		FL		DATE		DATA SOURCE:		SCALE:	
															N/A		1" = 100"	
			DRAWN			TD							05/27/20		DRMP PROJECT:			
			CHECKED			FL							05/27/20		06-0809.008			

07-PE12-09/01

July 9, 2020

This instrument prepared by

Marika Tremblay

Under the direction of

FREDRICK W. LOOSE, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-6834

PARCEL NO. 812.1A

SECTION 70220

F.P. NO. 426905 3

STATE ROAD 9

COUNTY BREVARD

RESOLUTION

ON MOTION of Commissioner _____, seconded by
Commissioner _____, the following Resolution
was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 9, Section No. 70220, F.P. No. 426905 3, in Brevard County, Florida: and

WHEREAS, it is necessary that an easement across certain lands now owned by Brevard County be acquired by the State of Florida Department of Transportation: and

WHEREAS, said use is in the best interest of the County: and

WHEREAS, the State of Florida Department of Transportation has made application to said County to execute and deliver to the State of Florida Department of Transportation a perpetual easement, or easements, in favor of the State of Florida Department of Transportation for the purpose of nonexclusive access, and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, that the application of the State of Florida Department of Transportation for a perpetual easement, or easements, is for transportation purposes which are in the public or community interest and for public welfare; that a perpetual easement, or easements, in favor of the State of Florida Department of Transportation in Brevard County, should be drawn and executed by
Bryan Andrew Lober, Chair on behalf of this Board of County Commissioners.

PARCEL NO. 812.1A
SECTION 70220
F.P. NO. 426905 3
PAGE 2

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 719 South Woodland Blvd., DeLand, Florida, 32720-6834.

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the Board of County Commissioners of Brevard County, Florida at a meeting held on the 21 day of July, 2020.

ATTEST: _____
Scott Ellis, Clerk to the Board
Clerk (or Deputy Clerk)

BREVARD COUNTY, FLORIDA,
By Its Board of County
Commissioners

By: _____
Bryan Andrew Lober, Chair
Its Chairperson
(or Vice-Chairperson)

07-PE11-09/01

July 8, 2020

This instrument prepared by

Marika Tremblay

Under the direction of

DANIEL L. MCDERMOTT, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-6834

PARCEL NO. 812.1B

SECTION 70220

F.P. NO. 426905 3

STATE ROAD 9

COUNTY BREVARD

PERPETUAL EASEMENT

THIS EASEMENT made this 21 day of July, 2020, by BREVARD COUNTY, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH: That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual and non-exclusive easement for the limited purpose of providing up to 78.6 acre feet of flood plain compensation to grantee as required for FDOT F.P. No. 426905-3 (a/k/a the SR 9/Ellis Rd. Interchange Project), together with access as may be necessary to perform emergency maintenance in the event the St. Johns River Water Management District or Brevard County fails to adequately maintain the flood plain compensation area, over, under, upon and through the following described land in Brevard County, Florida, viz:

SEE ATTACHED SKETCH OF DESCRIPTION

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever.

PARCEL NO. 812.1B
SECTION 70220
F.P. NO. 426905 3
PAGE 2

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson (or Vice-Chairperson) of said Board, the day and year aforesaid.

ATTEST: _____
Scott Ellis, Clerk to the Board
Clerk (or Deputy Clerk)

BREVARD COUNTY, FLORIDA,
By Its Board of County
Commissioners

By: _____
Bryan Andrew Lober, Chair
Its Chairperson
(or Vice-Chairperson)

ADDRESS OF GRANTOR:
2727 Judge Fran Jameison Way
Viera, FL 32940

LEGAL DESCRIPTION

SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST
BREVARD COUNTY PARCEL ID: 27-36-34-00-502
OWNER NAME: BREVARD COUNTY

EXHIBIT "A"
SHEET 1 OF 2
NOT VALID WITHOUT SHEETS
2 OF 2

812B:

PREPARED BY DRMP, INC.

A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8184, PAGE 1303, BEING THAT PART OF PARCEL 107 OF EXHIBIT "A", LOCATED IN THE SW 1/4 (ONE-QUARTER) OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

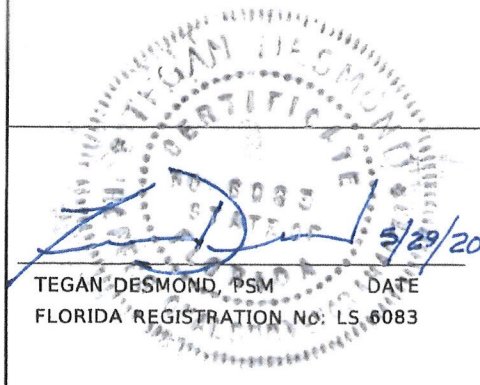
COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 (ONE-QUARTER) OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST; THENCE SOUTH 89°27'21" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 (ONE-QUARTER), A DISTANCE OF 746.70 FEET TO THE PROPOSED WESTERLY RIGHT OF WAY LINE OF PROPOSED ST. JOHNS HERITAGE PARKWAY AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°27'21" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1902.35 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST 1/4; THENCE RUN NORTH 00°09'33" WEST, ALONG THE WEST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 1249.85 FEET TO THE NORTH LINE OF THE SOUTH 1/2 (ONE-HALF) OF SAID SOUTHWEST 1/4; THENCE, DEPARTING SAID WEST LINE, NORTH 89°31'48" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 2114.83 FEET; THENCE, DEPARTING SAID NORTH LINE, SOUTH 00°50'03" EAST, A DISTANCE OF 359.60 FEET; THENCE SOUTH 29°23'16" WEST, A DISTANCE OF 116.10 FEET; THENCE SOUTH 07°27'10" WEST, A DISTANCE OF 122.86 FEET; THENCE SOUTH 14°28'56" EAST, A DISTANCE OF 293.33 FEET TO SAID PROPOSED WESTERLY RIGHT OF WAY LINE OF PROPOSED ST. JOHNS HERITAGE PARKWAY; THENCE RUN SOUTH 30°33'36" WEST, A DISTANCE OF 199.72 FEET ALONG SAID PROPOSED WESTERLY RIGHT OF WAY LINE TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 2969.79 FEET; THENCE RUN SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 239.13 FEET THROUGH A CENTRAL ANGLE OF 04°36'49" TO THE POINT OF BEGINNING.

CONTAINING 59.243 ACRES, MORE OR LESS.

SURVEYOR'S NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST, AS BEING SOUTH 89°27'21" WEST.
2. THE PURPOSE OF THIS LEGAL DESCRIPTION ACCOMPANIED BY A SKETCH OF DESCRIPTION IS TO PROVIDE A GEOGRAPHICAL DESCRIPTION OF REAL PROPERTY FOR THE PURPOSES OF IDENTIFYING THE PROPERTY FOR LEGAL TRANSACTIONS.
3. THE SKETCH OF DESCRIPTION SHOWN ON SHEET 2 OF 2 HEREIN, DOES NOT CONSTITUTE A BOUNDARY SURVEY.
4. THIS SKETCH AND DESCRIPTION OR THE COPIES THEREOF, EXCEPT THOSE WITH ELECTRONIC SIGNATURE AND ELECTRONIC SEAL ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND EMBOSSED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS SKETCH IS NOT A SURVEY



ST. JOHNS HERITAGE PARKWAY
BREVARD COUNTY, FLORIDA

RIGHT OF WAY
PARCEL SKETCH

PARCEL 812B

	BY	DATE	DATA SOURCE:	SCALE:
			N/A	N/A
DRAWN	TD	11/08/19	DRMP PROJECT:	
CHECKED	FL	11/08/19	06-0809.008	



SKETCH OF DESCRIPTION

SECTION 34, TOWNSHIP 27 SOUTH, RANGE 36 EAST
BREVARD COUNTY PARCEL ID: 27-36-34-00-502
OWNER NAME: BREVARD COUNTY

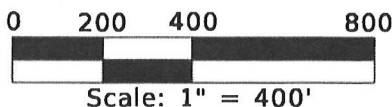


EXHIBIT "A"
SHEET 2 OF 2
NOT VALID WITHOUT SHEETS
1 OF 2



S.W. CORNER OF
THE S.W. 1/4 OF
SEC. 34-T27S-R36E

W. LINE OF THE S.W. 1/4 OF SEC. 34

N00°09'33"W 1249.85'

O.R.B. 2962, PG. 1918
PARCEL ID: 27-36-34-00-502

NOT PLATTED

NOT PLATTED

LEGEND

- Δ • CENTRAL ANGLE
- CB • CHORD BEARING
- CH • CHORD DISTANCE
- ID • IDENTIFICATION
- L • LENGTH
- L.B. • LICENSED BUSINESS
- No. • NUMBER
- O.R.B. • OFFICIAL RECORDS BOOK
- PL • PROPERTY LINE
- P.B. • PLAT BOOK
- PC • POINT OF CURVATURE
- PG. • PAGE
- R • RANGE/RADIUS
- R/W • RIGHT OF WAY
- SEC. • SECTION
- T • TOWNSHIP

HERITAGE LAKES OF
WEST MELBOURNE, INC.
27-36-34-00-500
O.R. 2982, PG. 931

- L1 S00°50'03"E 359.60'
- L2 S29°23'16"W 116.10'
- L3 S07°27'10"W 122.86'
- L4 S14°28'56"E 293.33'

N. 1/2 OF
THE S.W. 1/4
OF SEC. 34

S.E. 1/4 OF SEC. 34

THIS SKETCH IS NOT A SURVEY

FLORIDA INDIAN RIVER
LAND COMPANY SUBDIVISION
(P.B. 2, PG. 80)

POINT OF
BEGINNING

POINT OF
COMMENCEMENT
S.E. CORNER OF
THE S.W. 1/4 OF
SEC. 34-T27S-R36E

S89°27'21"W 1902.35'
T28S
T27S

S. LINE OF THE
S.W. 1/4 OF SEC. 34


SEC. 34

812B

CURVE
CONCAVE
EASTERLY
Δ=04°36'49"
L=239.13'
R=2969.79'
CH=239.07'
CB=S28°15'11"W

S30°33'36"W
199.72'

PROPOSED ST. JOHNS
HERITAGE PARKWAY

			ST. JOHNS HERITAGE PARKWAY BREVARD COUNTY, FLORIDA					RIGHT OF WAY PARCEL SKETCH	
			PARCEL 812B					SKETCH PREPARED BY	
				BY	DATE	DATA SOURCE :	SCALE :		
						N/A	1" = 400"		
			DRAWN	TD	11/08/19	DRMP PROJECT:			
			CHECKED	FL	11/08/19	06-0809.008			
REVISION	BY	DATE						 DRMP ENGINEERS • SURVEYORS • PLANNERS • SCIENTISTS 941 LAKE BALDWIN LANE ORLANDO, FLORIDA 32814 (407) 896-0594 L.B. No. 2648	

07-PE12-09/01

July 9, 2020

This instrument prepared by

Marika Tremblay

Under the direction of

DANIEL L. MCDERMOTT, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-6834

PARCEL NO. 812.1B

SECTION 70220

F.P. NO. 426905 3

STATE ROAD 9

COUNTY BREVARD

RESOLUTION

ON MOTION of Commissioner _____, seconded by
Commissioner _____, the following Resolution
was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 9, Section No. 70220, F.P. No. 426905-3, in Brevard County, Florida: and

WHEREAS, it is necessary that an easement across certain lands now owned by Brevard County be acquired by the State of Florida Department of Transportation: and

WHEREAS, said use is in the best interest of the County: and

WHEREAS, the State of Florida Department of Transportation has made application to said County to execute and deliver to the State of Florida Department of Transportation a perpetual easement, or easements, in favor of the State of Florida Department of Transportation for the purpose of constructing and performing necessary maintenance of a flood plain compensation pond, and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, that the application of the State of Florida Department of Transportation for a perpetual easement, or easements, is for transportation purposes which are in the public or community interest and for public welfare; that a perpetual easement, or easements, in favor of the State of Florida Department of Transportation in Brevard County, should be drawn and executed by Bryan Andrew Lober, Chair on behalf of this Board of County Commissioners.

PARCEL NO. 812.1B
SECTION 70220
F.P. NO. 426905 3
PAGE 2

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 719 South Woodland Blvd., DeLand, Florida, 32720-6834.

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the Board of County Commissioners of Brevard County, Florida at a meeting held on the 21 day of July, 2020.

ATTEST: _____
Scott Ellis, Clerk to the Board
Clerk (or Deputy Clerk)

BREVARD COUNTY, FLORIDA,
By Its Board of County
Commissioners

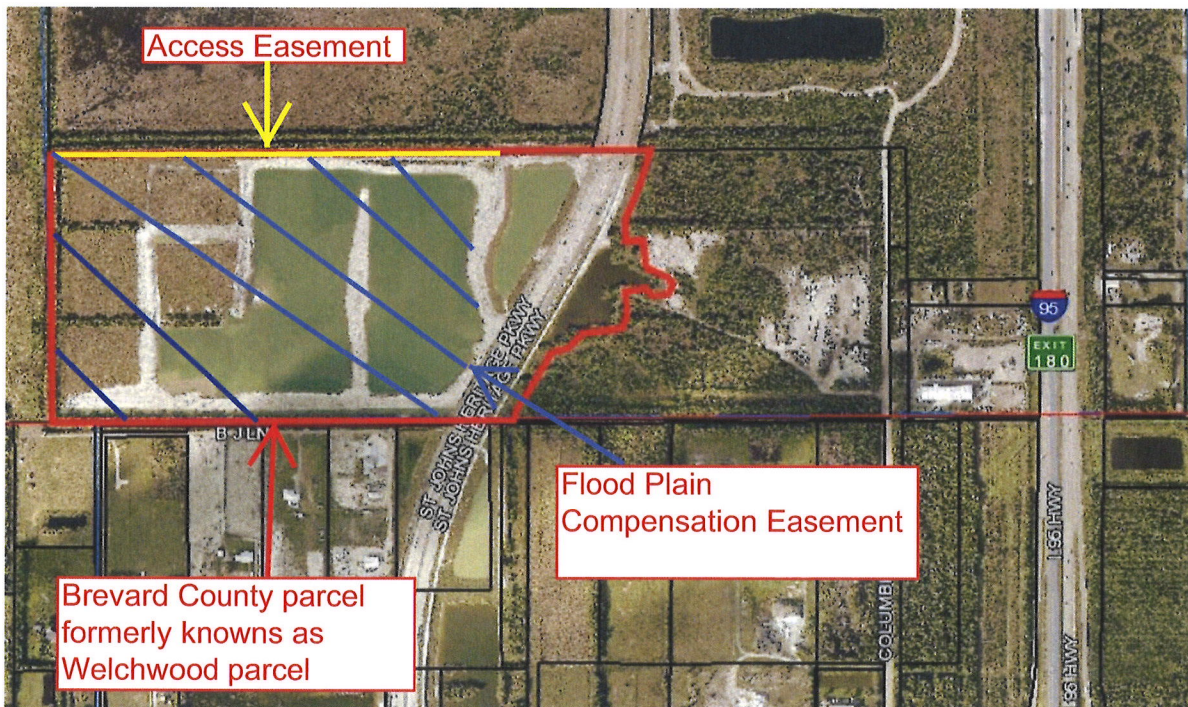
By: _____
Bryan Andrew Lober, Chair
Its Chairperson
(or Vice-Chairperson)

LOCATION MAP

Section 34, Township 27 South, Range 36 East District: 5

PROPERTY LOCATION: West of I-95 along the west side of St. Johns Heritage Parkway

OWNERS NAME: Brevard County, Florida





Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.6

7/21/2020

Subject:

Approval Re: Assignment and Assumption of Right of Way Use Agreement (Viera Town Center) to the Viera Town Center Merchant's Association, Inc. - District 4

Fiscal Impact:

None

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Assignment and Assumption of Right of Way Use Agreement (Viera Town Center) to the Viera Town Center Merchant's Association, Inc.

Summary Explanation and Background:

On January 7, 2020, the Board approved the Amended and Restated Right of Way Use Agreement for the Viera Town Center with The Viera Company, Inc. The Right of Way Use Agreement allowed for the installation of improvements, such as landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements in the public rights-of-way within the Viera Town Center. The Right of Way Use Agreement contained an assignability provision that acknowledged upon completion of the installation of the improvements, The Viera Company would assign its rights, duties, and obligations to the Viera Town Center Merchants Association, Inc. (Association). As such, The Viera Company desires to assign its rights, duties, and obligations to the Association. Per the Right of Way Use Agreement, any assignment shall be by a written instrument executed by The Viera Company, the assignee, and the County. Upon execution of the assignment, The Viera Company will be released from all obligations and duties, and the County shall look to the Association for the performance of the obligations and duties of the Right of Way Use Agreement. Per Administrative Order 29, the County Attorney's Office and Risk Management have reviewed and approved the Assignment and Assumption of the Right of Way Use Agreement (Viera Town Center).

Clerk to the Board Instructions:

Please return the fully executed Assignment and Assumption of the Right of Way Use Agreement (Viera Town Center) to the Public Works Department.



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: N/A		2. Amount: 0.00
3. Fund/Account #: N/A		4. Department Name: Public Works
5. Contract Description: Assignment of Right-of-Way Use Agreement re: Viera Town Center		
6. Contract Monitor: Jeanette Scott		8. Contract Type: USE AGREEMENT
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Thomas-Wood, Tammy

Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevardfl.gov
Date: 2020.07.08 14:43:07 -0400

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.07.08 09:42:36 -04'00'

County Attorney

☒
☐

Brewer, Jad

Digitally signed by Brewer, Jad
Date: 2020.07.08 08:52:16 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**ASSIGNMENT AND ASSUMPTION
OF
RIGHT OF WAY USE AGREEMENT
(Viera Town Center Merchants Association)**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT OF WAY USE AGREEMENT (this “Assignment”) is dated as of June 18, 2020 (the “Effective Date”) and is between THE VIERA COMPANY, a Florida corporation (“Assignor”), as assignor, and VIERA TOWN CENTER MERCHANTS ASSOCIATION, INC., a Florida not-for-profit corporation (“Assignee”), as assignee.

RECITALS

A. Assignor and the Brevard County, Florida, a political subdivision of the State of Florida (the “County”) entered into that certain Amended and Restated Right of Way Use Agreement dated January 7, 2020 relating to Assignor’s installation of landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements along public right-of-ways of Town Center Avenue and Rodina Drive in Viera, Florida, with a copy of that agreement attached hereto as Exhibit A and incorporated herein by this reference (the “Agreement”); and

B. Assignor has completed the installation of the improvements to be installed by Assignor under the Agreement, and now desires to assign its rights, duties, and obligations arising from and after the Effective Date under the Agreement to Assignee as intended under the Agreement.

Now, therefore, in consideration of Ten and 00/100 Dollars (\$10.00), the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by Assignor and Assignee, Assignor and Assignee hereby agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into this assignment by this reference.

2. Assignment and Assumption. Assignor hereby assigns to Assignee all of Assignor’s rights and interest under the Agreement to Assignee that arise from and after the Effective Date. Further, Assignor hereby delegates to Assignee all of Assignor’s duties and obligations under the Agreement that arise from and after the Effective Date. Assignee hereby accepts the above-referenced assignment of rights and delegation of duties and obligations of Assignor under the Agreement and assumes all of the rights, duties, and obligations of Assignor under the Agreement that arise from and after the Effective Date. The foregoing assignment and delegation by Assignor to Assignee is in accordance with Section 13 of the Agreement. By its joinder in the execution of this Assignment, the County hereby consents to such assignment and delegation by Assignor to Assignee.

3. Notices. Each notice, request, demand, and other communication delivered by a party under the Agreement to Assignee, as assignee of the Agreement, shall be addressed to Assignee at the following address unless otherwise advised by Assignee in writing:

Viera Town Center Merchants Association, Inc.
Attention: Ms. Eva Rey, President
7380 Murrell Road, Suite 201
Viera, FL 32940

4. Partial Invalidity. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this

Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by applicable law.

5. Governing Law; Submission to Jurisdiction. This Assignment shall be governed by, and construed in accordance with, the law of the State of Florida applicable to contracts made within and to be performed within the State of Florida. The parties hereto agree to submit to personal jurisdiction in the State of Florida in any action or proceeding arising out of this Assignment and, in furtherance of such agreement, the parties hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the parties in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of Florida. In the event of any action to enforce the terms of this Assignment, each party shall bear its own attorney's fees and any trial shall be a non-jury trial.

6. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any counterpart delivered by electronic transmission shall be deemed an original counterpart from the sending party.

IN WITNESS WHEREOF, Assignor and Assignee have signed this Assignment as of the date set forth on the first page of this Assignment:

WITNESSES:

Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNOR:

THE VIERA COMPANY,
a Florida corporation

By: Todd J. Pokrywa

Name: Todd J. Pokrywa

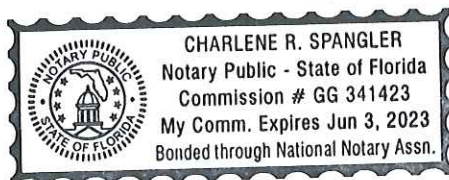
Title: President

Date: June 18, 2020

STATE OF FLORIDA)

COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ☒ physical presence or ☐ online notarization this 18th day of June 2020 by TODD J. POKRYWA as PRESIDENT of THE VIERA COMPANY, a Florida corporation, on behalf of the corporation. He is personally known to me.



Charlene R. Spangler
Print Name: Charlene R. Spangler
Notary Public, State of Florida
Commission No.: GG 341423
My Commission Expires: 6/3/2023

(SIGNATURE OF ASSIGNEE IS ON THE FOLLOWING PAGE.)

WITNESSES:Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNEE:VIERA TOWN CENTER MERCHANTS
ASSOCIATION, INC.,
a Florida not-for-profit corporationBy: Eva M. Rey

Name: Eva M. Rey

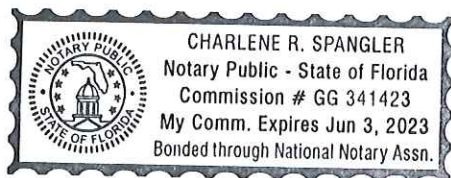
Title: President

Date: 6/18/20

STATE OF FLORIDA)

COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ☒ physical presence or ☐ online notarization this 18th day of June 2020 by EVA M. REY, as PRESIDENT of VIERA TOWN CENTER MERCHANTS ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. She (☒) is personally known to me or (☐) has produced a Florida Driver's License as proof of identification.



Charlene R. Spangler
Print Name: Charlene R. Spangler
Notary Public, State of Florida
Commission No.: GG 341423
My Commission Expires: 6/3/2023

JOINDER

The County hereby joins in the execution of this Assignment for the purposes of consenting to the terms and conditions of this Assignment.

ATTEST:

COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY FLORIDA,

Scott Ellis, Clerk

Approved as to legal form and content:

Assistant County Attorney

By: Bryan Andrew Lober, Chair

As approved by the Board on: July 21, 2020

Exhibit A
The Agreement

F:\shared\COMMUNITY MANAGEMENT\County Right of Way Use Agreements\Assignment to Viera Town Center Merchants Association (June 2020).docx

AMENDED AND RESTATED RIGHT-OF-WAY USE AGREEMENT (Viera Town Center)

This Amended and Restated Right-Of-Way Use Agreement (this "Agreement"), made and entered into this 7th day of January 2020 by and between Brevard County, Florida, a political subdivision of the State of Florida (the "County"), and The Viera Company, a Florida corporation (the "The Viera Company"), whose principal address is 7380 Murrell Road, Suite 201, Viera, Florida 32940.

RECITALS

Whereas, the public right-of-way(s) within the Viera Town Center set forth in Attachment "A" attached hereto and incorporated herein by this reference (the "Public Right-of-Way") has/have been dedicated to Brevard County, Florida;

Whereas, The Viera Company desires to improve the Public Right-of-Way by installing improvements, which may consist of, but are not limited to, improvements for landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements pursuant to plans and specifications approved by the County and further described below;

Whereas, the County pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of a public right-of-way for purposes which do not conflict with the interests of the public or are in the interests of the public;

Whereas, the County has determined that use of the Public Right-of-Way by The Viera Company for the installation, operation, maintenance, repair and improvement of such improvements to the Public Right-of-Way pursuant to this Agreement promotes the public interest; and

Whereas, the County and The Viera Company desire to enter into this Agreement to fully amend, restate, and supersede that certain Right of Way Use Agreement (Viera Town Center) entered into by the County and The Viera Company on February 20, 2018.

Now therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Recitals

The above recitals are true and correct and incorporated into this Agreement by this reference.

2. Definitions

The following terms used in this Agreement shall have the meaning given to such terms below:

- a) Agreement: shall mean this Right-of-Way Use Agreement (Viera Town Center).

- b) Association: shall mean Viera Town Center Merchants Association, Inc., a Florida not-for-profit corporation, as more particularly described in that certain Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Viera Town Center District recorded on December 29, 2016 in Official Records Book 7788, Page 438, of the Public Records of Brevard County, Florida, as may be amended from time to time, to which The Viera Company elects to assign its rights, and delegates its duties and obligations to, under this Agreement as permitted under Paragraph 13 of this Agreement.
- c) County: shall mean Brevard County, Florida, a political subdivision of the State of Florida.
- d) Designated Premises: shall mean that portion of the Public Right-of-Way more particularly described in Attachment "A" attached hereto and incorporated herein by this reference, where the Improvements will be installed and maintained, with the Designated Premises to be more particularly described in the Plans as approved by the County.
- e) Improvements: shall mean those certain improvements installed or to be installed by The Viera Company within the Designated Premises in accordance with the Plans and maintained by The Viera Company in accordance with the provisions of this Agreement as approved by the County pursuant to any Right-of-Way Permit issued by the County.
- f) Plans: shall mean those certain plans for the construction and installation of Improvements which have been approved by The Viera Company and the County as part of a Right-of-Way Permit.
- g) Prompt or Promptly: For purposes of Paragraph 8, the term "promptly" shall mean no later than fourteen days after The Viera Company receives written notice of the need for maintenance, repairs, or replacements to the applicable Improvements (as may be extended on a day-by-day basis for acts of force majeure beyond The Viera Company's control); however, to the extent such maintenance, repairs, or replacements cannot reasonably be completed within fourteen days, the term "promptly" shall mean The Viera Company shall commence such maintenance, repairs, or replacements within such initial fourteen day period and shall diligently work to complete such maintenance, repairs, or replacements. For purposes of Paragraph 10, the term "promptly" or "prompt" shall mean no later than fourteen days after The Viera Company receives actual notice of the existence of a hazardous condition, or a condition in need of maintenance as required hereunder, at the Designated Premises.
- h) Public Right-of-Way: shall have the meaning given to such term in the second recital set forth above.
- i) Right-of-Way Permit: shall mean the official written approval to begin construction or installation of Improvements according to the application, plans, specifications and conditions approved by the County.
- j) The Viera Company: shall mean The Viera Company, a Florida corporation.

3. Construction and Maintenance of Property

During the term of this Agreement, The Viera Company hereby agrees to construct and maintain the Improvements within the Designated Premises in the manner described in this Agreement and as permitted by the County. Improvements shall be constructed and installed in such a manner so as to not cause damage to or interfere with any County improvements or facilities. Any such damage to County improvements or facilities shall be remedied immediately at no cost to the County.

4. Term

The initial term of this Agreement shall be twenty years commencing with the date of the execution of this Agreement by the County and The Viera Company, and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with Paragraph 15 Termination herein.

5. Use of Designated Premises

During the term of this Agreement, The Viera Company shall use the Designated Premises only for construction and installation of the Improvements and related maintenance thereto. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the Designated Premises as part of the Improvements shall be for decorative or informational purposes only and not for human occupancy, nor shall such Improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth for the Improvements upon the Designated Premises shall be the only use consented to by the County, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately terminate this Agreement.

6. Improvements

All Improvements permitted and installed upon the Designated Premises by The Viera Company shall be maintained by The Viera Company on the Designated Premises during the term of this Agreement in accordance with this Agreement and any County issued Right-of-Way Permit. It is hereby agreed and understood that any Improvements placed on or constructed on the Designated Premises and permanently attached thereto, shall remain the property of The Viera Company and that The Viera Company retains the right to remove such Improvement within sixty days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such Improvements are not removed within sixty days of termination, the Improvements shall become the property of the County, and the County may remove the Improvements. To the extent the County elects to remove any such Improvements, The Viera Company shall reimburse the County for the cost of removal within thirty days of receipt of an invoice for such removal expenses.

7. Utilities

The Viera Company shall pay all charges for electrical service and other utility services supplied to The Viera Company at the Designated Premises for the Improvements during the term of this Agreement.

8. Repairs and Maintenance

During the term of this Agreement, The Viera Company shall, at its own expense, maintain the Designated Premises and all Improvements on the Designated Premises in accordance with this Agreement, any County issued Right-of-Way Permit and all applicable County and Florida Department of Transportation current maintenance and safety requirements and as updated and make all necessary repairs and replacements to the Designated Premises and/or the Improvements. Such maintenance, repairs and replacements shall be made promptly as and when necessary. Notification of the need for such repair and/or maintenance may be given to The Viera Company by written or electronic communication.

9. Illegal, Unlawful or Improper Use

The Viera Company shall make no unlawful, improper, immoral or offensive use of the Designated Premises, nor will The Viera Company use the Designated Premises or allow use of the Designated Premises for any purposes other than that hereinabove set forth. Failure of The Viera Company to comply with this provision shall be considered a material default under this Agreement. In the event any of the Improvements are deemed a traffic safety hazard by the County or the Florida Department of Transportation, such use shall be deemed an improper use and this Agreement shall be subject to immediate termination.

10. Indemnification and Insurance

Except where limited by law, The Viera Company agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the Designated Premises or any of the Improvements thereon or any equipment or fixtures used in connection with the Designated Premises by The Viera Company or its employees or independent contractors. The Viera Company agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with The Viera Company's use of the Designated Premises pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. The Viera Company shall include in any contract for work upon or involving the Designated Premises that the contractor shall indemnify and hold harmless the County from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract. The parties acknowledge specific consideration has been exchanged for the provision.

The Viera Company further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability Insurance Insuring The Viera Company against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Designated Premises and the Improvements thereon. Such policies of insurance shall insure The Viera Company in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works

Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida, 32940, within ten days of the date of execution of this Agreement by The Viera Company and the County and annually upon Insurance renewal. The County shall be named as an additional insured on the policy that The Viera Company secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies.

The Viera Company shall also be required to include in any contract for work upon or involving the Designated Premises that the contractor is required to maintain, without cost or expense to the County, the following types of insurance. The policy limits required are to be considered minimum amounts:

- General Liability Insurance in an amount not less than one million dollars combined single limit for each occurrence and to include coverage for Explosion, Collapse, Underground (XCU) hazards.
- Workers' Compensation Insurance (for statutory limits) as required by Florida Statutes, Chapter 440.

Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

The Viera Company shall notify the County promptly in writing of any hazardous condition existing on or about the Designated Premises.

All Improvements or personal property constructed or placed on or about the Designated Premises by The Viera Company or its employees or independent contractors shall be at the risk of The Viera Company, and the County shall not be liable for any damage or loss to any Improvements or personal property located thereon for any cause whatsoever. The Viera Company agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover The Viera Company's interests therein. At the time of execution of this Agreement, any existing Improvements installed on the Designated Premises will be the maintenance responsibility of The Viera Company. In the event any pre-existing improvements causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, The Viera Company will be responsible for prompt repair to such County property. If The Viera Company fails to promptly repair the damage, The Viera Company will pay the County all costs incurred by the County to repair the damage.

11. Right of Entry

It is expressly stipulated that this Agreement is a license for permissive use only and that the construction within and/or upon public property pursuant to this Agreement shall not operate to create or vest any property right in said holder. This Agreement does not relieve The Viera Company of local or other jurisdictional requirements. The County or its agents may enter in and on the Designated Premises at any time for any purpose, including inspecting such property

or performing other duties of the County as are required by law or by the terms of this Agreement.

12. Compliance with Statutes

The Viera Company shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Designated Premises for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Designated Premises during the term of the Agreement.

13. Binding Effect; Assignability

This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. Except as otherwise provided herein below, The Viera Company shall not assign this Agreement or any portion thereof of The Viera Company's rights, obligations, or duties hereunder to any party without the prior written consent of the County. However, the County and The Viera Company acknowledge that upon completing the initial installation of the Improvements upon a particular Public Right-of-Way, it is intended that all of the rights, obligations and duties of The Viera Company under this Agreement relating to the Improvements on that Public Right-of-Way will be assigned by The Viera Company to the Association, as to be determined by The Viera Company in its sole and absolute discretion, but subject to the County's written consent. Any such assignments shall be by a written instrument executed with the formality of a deed on behalf of The Viera Company assigning such rights, obligations and duties to the assignee, and on behalf of the assignee assuming such rights, obligations and duties. Such assignments shall also set forth the address of the assignee for purposes of receiving notices under this Agreement in accordance with Paragraph 16 herein below. Upon the execution of such assignments by The Viera Company, the assignee, and the County, and its delivery to the County, the County agrees that The Viera Company shall be released from all obligations and duties hereunder as to the assigned obligations and duties and that the County shall thereafter look solely to the applicable assignee for the performance of such obligations and duties.

14. Independent Contractor

The Viera Company shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make The Viera Company or any of its agents or employees to be the agent, employee or representative of the County.

15. Termination

This Agreement may be terminated with or without cause by either party upon sixty days' written notice thereof to the other party; provided, however, that upon termination, The Viera Company or, if this Agreement or any portion thereof has been assigned as permitted hereunder, then the applicable assignees of this Agreement, shall, at the request of the County, remove all Improvements to the Designated Premises, or, in the alternative, reimburse the County for the cost of such removal. In the event this Agreement is terminated and the County assumes ownership of the Improvements within the Public Right-of-Way, the County does not

assume maintenance responsibility unless expressly provided in writing. Any maintenance performed by the County will not constitute an assumption of maintenance responsibility as may be otherwise assigned by Florida Statute or County Code.

16. Notice; Notice of Breach

Notice under this Agreement shall be given to the County at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940 with a copy to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida 32940. Notice under this Agreement shall be given to The Viera Company at 7380 Murrell Road, Suite 201, Viera, Florida 32940 or by email to brenton.albertson@duda.com and vieralegal@duda.com.

In the event the County determines The Viera Company or any assignee has breached any term or provision of this Agreement, the County shall provide written notice of such breach to breaching party and the breaching party shall have thirty days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonable be cured within such thirty day period, then the breaching party shall have such longer period to cure the breach as is reasonably necessary provided, however, that if the breaching party commences reasonable action to remedy the breach within such thirty day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

17. Right to Audit Records

In the performance of this Agreement, The Viera Company and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of The Viera Company or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to The Viera Company or any assignee not less than five business days advance notice and shall be respectively retained by The Viera Company and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by The Viera Company or any assignee or provided to The Viera Company or any assignee under the terms of this Agreement, are public records and The Viera Company and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

18. Waiver

The waiver by the County of any of The Viera Company's or any assignee's respective obligations or duties under this Agreement shall not constitute a waiver of any other respective obligation or duty of The Viera Company or any assignee under this Agreement.

19. Entirety and Modifications

This Agreement fully amends, restates, and supersedes that certain Right of Way Use Agreement (Viera Town Center) entered into by the County and The Viera Company on February 20, 2018. This Agreement represents the understanding between the parties in its

entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between the County and The Viera Company as to the subject matter of this Agreement. This Agreement may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein. Attachment "A", which is intended to set forth the Designated Premises of this Agreement, may be modified as Improvements are approved pursuant to the terms of this Agreement. This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto.

20. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. Attorney's Fees and Venue

In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

22. Construction of Agreement

The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

Done, ordered and adopted in Regular Session this 7 day of January, 2020.

Attest:

Board of County Commissioners
of Brevard County, Florida



Scott Ellis, Clerk



Bryan Lober, Chair
As approved by the Board on 1/7/2020

Approved as to legal form and content:

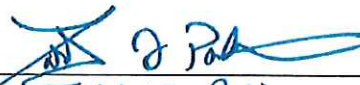


Assistant County Attorney

The Viera Company, a Florida corporation



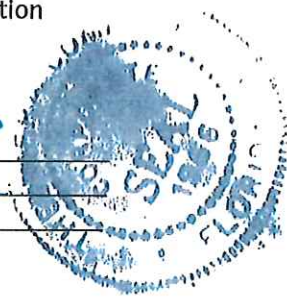
Printed name: KAREN P. PROSSER



Name: Todd J. Pokrywka
Title: President



Printed name: Mary Ellen McKibben



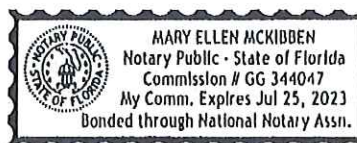
State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 10th day of December, 2019,
by Todd J. Pokrywka, as President of The Viera
Company, a Florida corporation, on behalf of the corporation, who is personally known to me.



Notary Public
Mary Ellen McKibben

Printed Name

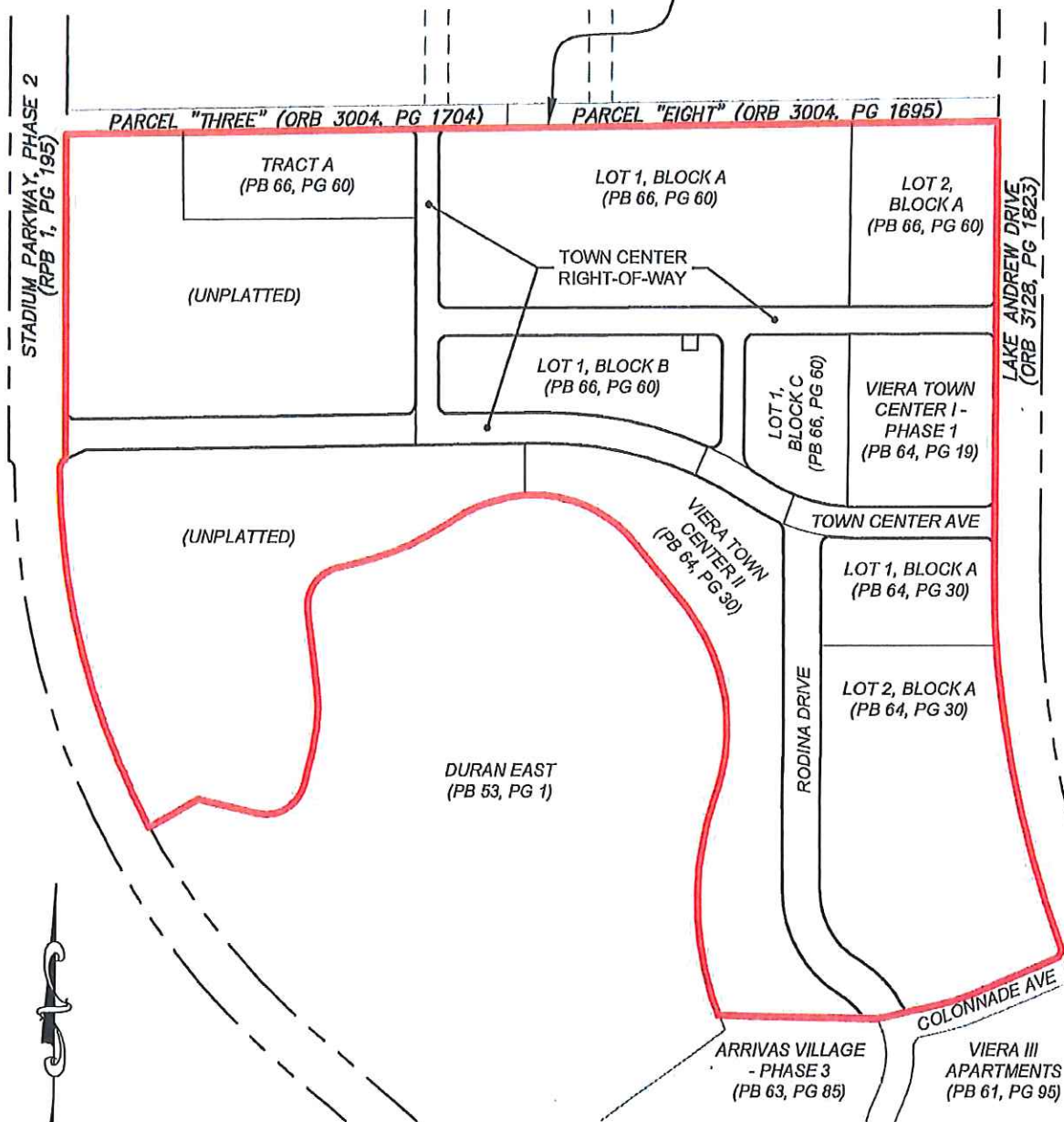


ATTACHMENT "A" TOWN CENTER RIGHT-OF-WAY USE AGREEMENT

NOTE:

IN ACCORDANCE WITH THE RIGHT-OF-WAY USE AGREEMENT FOR VIERA TOWN CENTER, ATTACHMENT "A" DOES NOT INDICATE APPROVAL OF IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY. APPROVAL OF IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY IS CONTINGENT UPON PERMITTING AND ACCEPTANCE BY THE COUNTY. ATTACHMENT A, WHICH IS INTENDED TO SET FORTH THE DESIGNATED PREMISES OF THIS AGREEMENT, MAY BE MODIFIED AS IMPROVEMENTS ARE APPROVED PURSUANT TO THE TERMS OF THIS AGREEMENT

DESIGNATED PREMISES



0 400
(IN FEET)



B.S.E. CONSULTANTS, INC.
CONSULTING - ENGINEERING - LAND SURVEYING
312 SOUTH HARBOR CITY BOULEVARD, SUITE 4 MELBOURNE, FL 32901
PHONE: (321) 725-3674 FAX: (321) 723-1159
CERTIFICATE OF BUSINESS AUTHORIZATION: 4505
CERTIFICATE OF LAND SURVEYING BUSINESS AUTHORIZATION: LB00001505

DATE: 11/13/19
DESIGN/DRAWN: HAI/RLR
DRAWING# 1144801_200_004
PROJECT# 11448.01
SHEET 1 OF 1



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7

7/21/2020

Subject:

Approval Re: Construction Contract Change Order No. 10 for the Intelligent Transportation System Phase 2 Construction for the St. Johns Heritage Parkway Northern Segment - District 5

Fiscal Impact:

\$298,910.49 for Contract Change Order No. 10. These costs will be reimbursed 50% by the State of Florida Department of Transportation County Incentive Grant Program. The County's portion of \$149,455.25 will be provided from Local Option Gas Tax funds previously allocated to the project. No new funds are being allocated to the project.

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners: 1) approve and authorize the Chair to execute Contract Change Order No. 10 in the amount of \$298,910.49 to Jr. Davis Construction, Co., Inc. (Contractor) for the construction of the Intelligent Transportation System Phase 2 work for the St. Johns Heritage Parkway Northern Segment; 2) approve any necessary Budget Change Requests associated with this action.

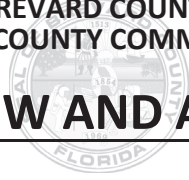
Summary Explanation and Background:

The Intelligent Transportation System (I.T.S.) Phase 2 design is complete and will result in Engineering Revision No. 6. This revision also expands the original I.T.S. work scope to finalize the improvements along the S.J.H.P. from US 192 to the Ellis I-95 Interchange, including the installation of I.T.S. devices, power services, support structures and associated communication/power wiring and cabinets. Contract Change Order No. 10 will result in a net increase of \$298,910.49 to the contract amount, and an additional 42 calendar days will be added to the contract time. The additional 42calendar days is limited to the I.T.S. Phase 2 expansion work.

Presently, the roadway is open to traffic as the Contractor achieved Substantial Completion on June 2, 2020. The Contractor has requested to be released from third party damages given that the Final Completion is anticipated to not occur for an additional several months. Contract Change Order No. 10 includes a provision for this claims release, defines third parties, and reaffirms that the Contractor shall continue to be responsible for all warranty and performance obligations under contract No. 4256 dated February 14, 2019, including all change orders, and the Public Construction Bond (Bond No. 30058004).

Clerk to the Board Instructions:

Please return Contract Change Order No. 10 to the Public Works Department for further execution.



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Jr. Davis Construction Co., Inc.		2. Amount: \$298,910.49
3. Fund/Account #: 1700/344935 & 1232/270970	4. Department Name: Public Works	
5. Contract Description: Contract Change Order No. 10		
6. Contract Monitor: Jeanette Scott	8. Contract Type: CONSTRUCTION	
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thomas-Wood, Tammy <small>Digitally signed by Thomas-Wood, Tammy DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevardfl.gov Date: 2020.07.10 10:12:46 -0400</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2020.07.10 09:38:08 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brewer, Jad <small>Digitally signed by Brewer, Jad Date: 2020.07.10 07:42:54 -04'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



BOARD OF COUNTY COMMISSIONERS

Public Works Department

2725 Judge Fran Jamieson Way
Building A, Room 201
Viera Florida 32940
321-617-7202

Contract Change Order #10

Originating Department: Public Works Department

Contract Number: 4256

Project Title: St. Johns Heritage Parkway (S.J.H.P.) Northern Segment

Original Contract Amount: \$10,482,615.27

List Previous Change Orders (C.O.) by Number and Price: C.O.#1 \$3,450.00, C.O.#2 \$24,900.75, C.O.#3 \$22,405.39, C.O.#4 \$38,966.55, C.O.#5 \$63,368.50, C.O.#6 \$3,816.33, C.O.#7 \$551,200.04, C.O.#8 \$950.00, C.O.#9 \$23,867.26

Proposed Change Order Description and Cost:

DRMP submitted the Intelligent Transportation System (I.T.S.) Phase II revision to Brevard County as Engineering Revision #6 to the S.J.H.P. Northern Project on April 2, 2020. This revision expands the original I.T.S. work scope to include improvements along the S.J.H.P. from State Road 500 (US 192) to the Ellis I-95 Interchange. Jr. Davis Construction, Inc. (J.D.C.) submitted Request for Information (R.F.I.) #17 on June 25, 2020 with the proposal for Engineering Revision #6. J.D.C. has requested an additional \$298,910.49 and 42 calendar days to complete the additional I.T.S. Phase II improvements. The proposal is acceptable to County staff and the Engineer of Record.

F.D.O.T. confirmed on November 19, 2019 that the additional work is eligible for reimbursement per the terms of the executed County Incentive Grant Program Agreement and corresponding Supplemental Agreement.

On April 21, 2020, the Board of County Commissioners approved Change Order #7 which included Board pre-approval for a change order estimated up to \$285,000 for the I.T.S. Phase II work. The actual cost exceeds the pre-approved value and requires additional Board action. Furthermore, J.D.C. has requested to be released from third party damages. *Per Notice of Substantial Completion – Bid No. B-4-19-28, received June 19, 2020, the work is at a level of completion and the Owner has occupied the work for use, Jr. Davis Construction Company, Inc., shall not be held liable for damages to the work related to the actions of any third party, as of June 2, 2020. Third Party shall be defined as any party that is not doing any type of work under the subject contract No. 4256 dated February 14, 2019, including all change orders, and/or under the Public Construction Bond (Bond No. 30058004). Jr. Davis Construction Company, Inc. shall continue to be responsible for all warranty and performance*

obligations under the subject contract No. 4256 dated February 14, 2019, including all change orders, and the Public Construction Bond (Bond No. 30058004). Should any dispute and/or claim arise related to contract No. 4256 (including all past and future change orders), such dispute and/or claim shall be addressed by the dispute provisions under the subject contract.

The I.T.S. Phase II improvements will result in a maximum net increase of \$298,910.49, and an additional forty-two calendar days added to the contract time. The current final completion date of January 18, 2021 will change to March 1, 2021.

Signature page for Contract Change Order 10, Contract Number 4256

Approvals:

Wayne Chalifoux, P.E.
Engineer of Record, DRMP

Rachel Gerena, P.E., Public Works Engineering
Brevard County

Marc Bernath, Public Works Director
Brevard County

Attest:

Board of County Commissioners of
Brevard County, Florida

Scott Ellis, Clerk

By:

Bryan Andrew Lober, Chair

As approved by the Board on: _July 21, 2020_____

Corporate SEAL

Jr. Davis Construction Co., Inc.

By:

James B. Davis, Jr., President

ACKNOWLEDGMENT
STATE OF FLORIDA
COUNTY OF OSCEOLA

I hereby certify that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared _____ known to be the President of Jr. Davis Construction Co., Inc., who executed the foregoing instrument, and they acknowledged before me that they executed the same.

Witness my hand and official seal, _____ day of _____, 2020.

Notary Public
State of Florida
My Commission Expires:

St. John's Heritage Parkway - North Section
Project #0650001
Change Order #10

Item Number	Description	Reference	Unit Price	Unit	Previous Contract		Revised Contract		New Change	
					Quantity	Amount	Quantity	Amount	Quantity	Amount
102-1D	Maintenance of Traffic (Phase II ITS)	RFI#17	5,601.48	LS	0	\$0.00	1	\$5,601.48	1	\$5,601.48
630-2-11B	Conduit (F&I) (Open Trench)	RFI#17	9.41	LF	0	\$0.00	25	\$235.25	25	\$235.25
630-2-14A	Conduit (F&I) (Aboveground)	RFI#17	58.90	LF	0	\$0.00	16	\$942.40	16	\$942.40
633-1-121A	Fiber Optic Cable, F&I, Underground, 2-12 Fibers	RFI#17	2.64	LF	0	\$0.00	381	\$1,005.84	381	\$1,005.84
633-2-31C	Fiber Optic Connection, Install, Splice	RFI#17	41.07	EA	0	\$0.00	24	\$985.68	24	\$985.68
633-3-11A	Fiber Optic Connection, Hardware, F&I, Splice Enclosure	RFI#17	860.00	EA	0	\$0.00	2	\$1,720.00	2	\$1,720.00
633-3-12A	Fiber Optic Connection, Hardware, F&I, Splice Tray	RFI#17	58.68	EA	0	\$0.00	2	\$117.36	2	\$117.36
633-3-15A	Fiber Optic Connection, Hardware, F&I, Preterminated Patch Panel	RFI#17	1,754.34	EA	0	\$0.00	2	\$3,508.68	2	\$3,508.68
639-1-122	Electrical Power Service, F&I, Underground	RFI#17	2,901.19	AS	0	\$0.00	1	\$2,901.19	1	\$2,901.19
639-2-1	Electrical Service Wire, F&I	RFI#17	8.80	LF	0	\$0.00	6778	\$59,646.40	6778	\$59,646.40
639-3-11	Electrical Service Disconnect, F&I, Pole Mount	RFI#17	1,942.82	EA	0	\$0.00	2	\$3,885.64	2	\$3,885.64
639-6-1	Electrical Power Service, Transformer, F&I	RFI#17	2,882.15	EA	0	\$0.00	3	\$8,646.45	3	\$8,646.45
641-2-12	Prestressed Conc Pole, F&I, Type P-II, Service Pole	RFI#17	1,278.56	EA	0	\$0.00	2	\$2,557.12	2	\$2,557.12
641-3-163	Conc CCTV Pole, F&I, W/Lowering Device, 63'	RFI#17	26,032.95	EA	0	\$0.00	1	\$26,032.95	1	\$26,032.95
641-3-169	Conc CCTV Pole, F&I, W/Lowering Device, 69'	RFI#17	31,760.94	EA	0	\$0.00	1	\$31,760.94	1	\$31,760.94
676-2-122	ITS Cabinet, F&I, Pole Mount, W/Sunshield 3365	RFI#17	10,826.26	EA	0	\$0.00	2	\$21,652.52	2	\$21,652.52
682-1-133	ITS CCTV Camera, F&I, Dome Enclosure-Non Pressurized	RFI#17	7,620.91	EA	0	\$0.00	6	\$45,725.46	6	\$45,725.46
684-1-1A	Managed Field Ethernet Switch, F&I	RFI#17	4,688.02	EA	0	\$0.00	2	\$9,376.04	2	\$9,376.04
685-1-11	Uninterruptible Power Supply, F&I Line Interactive	RFI#17	9,014.34	EA	0	\$0.00	2	\$18,028.68	2	\$18,028.68
570-1-2	Performance Turf, Sod	RFI#17	2.90	SY	123151.3	\$357,138.77	123951.3	\$359,458.77	800	\$2,320.00
107-2B	Mowing	RFI#17	112.07	AC	0	\$0.00	41	\$4,594.87	41	\$4,594.87
101-1C	Mobilization	RFI#17	21,528.34	LS	0	\$0.00	1	\$21,528.34	1	\$21,528.34
N/A	Project Superintendent	RFI#17	871.24	DY	0	\$0.00	30	\$26,137.20	30	\$26,137.20
Totals						\$357,138.77		\$656,049.26		\$298,910.49



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.8

7/21/2020

Subject:

Approval Re: Amended and Restated Right-of-Way Use Agreement with the Grand Haven Master Homeowners Association, Inc. - District 4

Fiscal Impact:

None

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Amended and Restated Right-of-Way Use Agreement with the Grand Haven Master Homeowners Association, Inc. to permit improvements to be installed and maintained in the Grand Haven community.

Summary Explanation and Background:

On November 30, 2004, Brevard County and the Grand Haven Master Homeowners Association, Inc. (Association) entered into the Right-of-Way Use Agreement. The Designated Premises in that Agreement were not all inclusive of the public rights-of-way that the Association desires to install improvements. Furthermore, the Agreement limited the type of improvements to only landscaping and irrigation. As such, the County and the Association desire to enter into this Agreement to fully amend, restate, and supersede that certain Right of Way Use Agreement entered into by the County and the Association on November 30, 2004.

The Amended and Restated Right-of-Way Use Agreement updates the Designated Premises to include the applicable public rights-of-way, as depicted on Attachment A. Further, the Amended and Reinstated Agreement provides for the installation of improvements, which may consist of, but are not limited to, improvements for landscaping, signage, hardscape, irrigation, and/or other related improvements. The improvements shall be submitted by the Association as right-of-way permit applications, and issuance of the permits shall be subject to approval by the County.

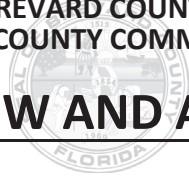
In accordance with the Agreement, the Association shall be required to maintain, repair, and replace the permitted improvements without cost to the County. Additionally, the Association is required to provide general liability insurance in an amount not less than one million dollars and name the County as additional insured. The initial term of the Amended and Restated Agreement shall be twenty years commencing with the date of execution by the Board and shall automatically renew annually unless terminated by either party with sixty days' written notice. Upon termination, the Association, at the request of the County, shall remove all improvements from the rights-of-way or the Association shall reimburse the County for the cost of such removal. Furthermore, in the event of termination and the County assumes ownership of the improvements,

the County does not assume maintenance responsibility unless expressly provided in writing.

The County may allow the use of the public right-of-way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. In accordance with Administrative Order 29, the Amended and Restated Right-of-Way Use Agreement for Grand Haven has been reviewed and approved by the County Attorney's Office and Risk Management. This Agreement will amend, restate, and supersede the Right-of-Way Use Agreement entered into by the County and the Association on November 30, 2004.

Clerk to the Board Instructions:

Please return the fully executed Amended and Restated Right-of-Way Use Agreement for Grand Haven to the Public Works Department.



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Grand Haven Master Homeowner's Association		2. Amount: 0.00
3. Fund/Account #: N/A	4. Department Name: Public Works Department	
5. Contract Description: Supersede Right-of-Way Use Agreement for Grand Haven		
6. Contract Monitor: Jeanette Scott		8. Contract Type: USE AGREEMENT
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Thomas-Wood, Tammy

Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevardfl.gov
Date: 2020.07.10 13:35:14 -0400

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.07.10 14:35:34 -04'00'

County Attorney

☒
☐

Brewer, Jad

Digitally signed by Brewer, Jad
Date: 2020.07.10 13:03:22 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

AMENDED AND RESTATED RIGHT-OF-WAY USE AGREEMENT (Grand Haven)

This Amended and Restated Right-Of-Way Use Agreement (this “Agreement”), made by and between Brevard County, Florida, a political subdivision of the State of Florida (the “County”), and Grand Haven Master Homeowners Association, Inc., a Florida corporation (the “Association”), whose mailing address is 7827 N. Wickham Road, Suite D, Melbourne, FL 32940.

RECITALS

Whereas, the public right-of-way(s) within the Grand Haven subdivision and the Pineda Causeway Extension set forth in Attachment A attached hereto and incorporated herein by this reference (the “Public Right-of-Way”) has been dedicated to Brevard County, Florida;

Whereas, Association desires to improve the Public Right-of-Way by installing improvements, which may consist of, but are not limited to, improvements for landscaping, signage, hardscape, irrigation, and/or other related improvements pursuant to plans and specifications approved by the County and further described below;

Whereas, the County pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of a public right-of-way for purposes which do not conflict with the interests of the public or are in the interests of the public;

Whereas, the County has determined that use of the Public Right-of-Way by the Association for the installation, operation, maintenance, repair and improvement of such improvements to the Public Right-of-Way pursuant to this Agreement promotes the public interest; and

Whereas, the County and the Association desire to enter into this Agreement to fully amend, restate, and supersede that certain Right of Way Use Agreement entered into by the County and the Association on November 30, 2004.

Now therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Recitals

The above recitals are true and correct and incorporated into this Agreement by this reference.

2. Definitions

The following terms used in this Agreement shall have the meaning given to such terms below:

- a) Agreement: shall mean this Right-of-Way Use Agreement (Grand Haven).
- b) Association: shall mean Grand Haven Master Homeowners Association, Inc., a Florida not-for-profit corporation.

- c) County: shall mean Brevard County, Florida, a political subdivision of the State of Florida.
- d) Designated Premises: shall mean that portion of the Public Right-of-Way more particularly described in Attachment A attached hereto and incorporated herein by this reference, where the Improvements will be installed and maintained, with the Designated Premises to be more particularly described in the Plans as approved by the County
- e) Improvements: shall mean those certain improvements installed or to be installed by the Association within the Designated Premises in accordance with the Plans and maintained by the Association in accordance with the provisions of this Agreement as approved by the County pursuant to any Right-of-Way Permit issued by the County.
- f) Plans: shall mean those certain plans for the construction and installation of Improvements which have been approved by the Association and the County as part of a Right-of-Way Permit.
- g) Prompt or Promptly: For purposes of Paragraph 8, the term “promptly” shall mean no later than fourteen days after the Association receives written notice of the need for maintenance, repairs, or replacements to the applicable Improvements (as may be extended on a day-by-day basis for acts of force majeure beyond the Association’s control); however, to the extent such maintenance, repairs, or replacements cannot reasonably be completed within fourteen days, the term “promptly” shall mean the Association shall commence such maintenance, repairs, or replacements within such initial fourteen day period and shall diligently work to complete such maintenance, repairs, or replacements. For purposes of Paragraph 10, the term “promptly” or “prompt” shall mean no later than fourteen days after the Association receives actual notice of the existence of a hazardous condition, or a condition in need of maintenance as required hereunder, at the Designated Premises.
- h) Public Right-of-Way: shall have the meaning given to such term in the second recital set forth above.
- i) Right-of-Way Permit: shall mean the official written approval to begin construction or installation of Improvements according to the application, plans, specifications and conditions approved by the County.

3. Construction and Maintenance of Property

During the term of this Agreement, the Association hereby agrees to construct and maintain the Improvements within the Designated Premises in the manner described in this Agreement and as permitted by the County. Improvements shall be constructed and installed in such a manner so as to not cause damage to or interfere with any County improvements or facilities. Any such damage to County improvements or facilities shall be remedied immediately at no cost to the County.

4. Term

The initial term of this Agreement shall be twenty years commencing with the date of the execution of this Agreement by the County and the Association, and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with Paragraph 15 Termination herein.

5. Use of Designated Premises

During the term of this Agreement, the Association shall use the Designated Premises only for construction and installation of the Improvements and related maintenance thereto. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the Designated Premises as part of the Improvements shall be for decorative or informational purposes only and not for human occupancy, nor shall such Improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth for the Improvements upon the Designated Premises shall be the only use consented to by the County, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately terminate this Agreement.

6. Improvements

All Improvements permitted and installed upon the Designated Premises by the Association shall be maintained by the Association on the Designated Premises during the term of this Agreement in accordance with this Agreement and any County issued Right-of-Way Permit. It is hereby agreed and understood that any Improvements placed on or constructed on the Designated Premises and permanently attached thereto, shall remain the property of the Association and that the Association retains the right to remove such improvement within sixty days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such Improvements are not removed within sixty days of termination, the Improvements shall become the property of the County, and the County may remove the Improvements. To the extent the County elects to remove any such Improvements, the Association shall reimburse the County for the cost of removal within thirty days of receipt of an invoice for such removal expenses.

7. Utilities

The Association shall pay all charges for electrical service and other utility services supplied to the Association at the Designated Premises for the Improvements during the term of this Agreement.

8. Repairs and Maintenance

During the term of this Agreement, the Association shall, at its own expense, maintain the Designated Premises and all Improvements on the Designated Premises in accordance with this Agreement, any County issued Right-of-Way Permit and all applicable County and Florida Department of Transportation current maintenance and safety requirements and as updated and make all necessary repairs and replacements to the Designated Premises and/or the Improvements. Such maintenance, repairs and replacements shall be made promptly as and

when necessary. Notification of the need for such repair and/or maintenance may be given to the Association by written or electronic communication.

9. Illegal, Unlawful or Improper Use

The Association shall make no unlawful, improper, immoral or offensive use of the Designated Premises, nor will the Association use the Designated Premises or allow use of the Designated Premises for any purposes other than that hereinabove set forth. Failure of the Association to comply with this provision shall be considered a material default under this Agreement. In the event any of the Improvements are deemed a traffic safety hazard by the County or the Florida Department of Transportation, such use shall be deemed an improper use and this Agreement shall be subject to immediate termination.

10. Indemnification and Insurance

Except where limited by law, the Association agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the Designated Premises or any of the Improvements thereon or any equipment or fixtures used in connection with the Designated Premises by the Association or its employees or independent contractors. The Association agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with the Association's use of the Designated Premises pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. The Association shall include in any contract for work upon or involving the Designated Premises that the contractor shall indemnify and hold harmless the County from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract. The parties acknowledge specific consideration has been exchanged for the provision.

The Association further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability Insurance insuring the Association against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Designated Premises and the Improvements thereon. Such policies of insurance shall insure the Association in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida, 32940, within ten days of the date of execution of this Agreement by the Association and the County and annually upon insurance renewal. The County's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure or maintain the insurance required herein, nor serve as a waiver of any rights or defenses the County may have. The County shall be named as an additional insured on the policy that the Association secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies.

The Association shall also be required to include in any contract for work upon or involving the Designated Premises that the contractor is required to maintain, without cost or expense to the County, the following types of insurance. The policy limits required are to be considered minimum amounts:

- General Liability Insurance in an amount not less than one million dollars combined single limit for each occurrence and to include coverage for Explosion, Collapse, Underground (X.C.U.) hazards.
- Workers' Compensation Insurance (for statutory limits) as required by Florida Statutes, Chapter 440.

Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

The Association shall notify the County promptly in writing of any hazardous condition existing on or about the Designated Premises.

All Improvements or personal property constructed or placed on or about the Designated Premises by the Association or its employees or independent contractors shall be at the risk of the Association, and the County shall not be liable for any damage or loss to any Improvements or personal property located thereon for any cause whatsoever. The Association agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover the Association's interests therein. At the time of execution of this Agreement, any existing improvements installed on the Designated Premises will be the maintenance responsibility of the Association. In the event any pre-existing improvements causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, the Association will be responsible for prompt repair to such County property. If the Association fails to promptly repair the damage, the Association will pay the County all costs incurred by the County to repair the damage.

11. Right of Entry

It is expressly stipulated that this Agreement is a license for permissive use only and that the construction within and/or upon public property pursuant to this Agreement shall not operate to create or vest any property right in said holder. This Agreement does not relieve the Association of local or other jurisdictional requirements. The County or its agents may enter in and on the Designated Premises at any time for any purpose, including inspecting such property or performing other duties of the County as are required by law or by the terms of this Agreement. Nothing in this Agreement shall limit the County's ability to take necessary and appropriate action to protect property, preserve life, or ensure safety of citizens in any emergency situation. The County shall not be responsible to replace improvements if emergency/safety requires immediate action by the County causing damage or removal of Improvements for preservation of life, safety, and property.

12. Compliance with Statutes

The Association shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Designated Premises for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Designated Premises during the term of the Agreement.

13. Binding Effect; Assignability

This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. The Association shall not assign this Agreement or any portion thereof of the Association's rights, obligations, or duties hereunder to any party without the prior written consent of the County.

14. Independent Contractor

The Association shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make the Association or any of its agents or employees to be the agent, employee or representative of the County.

15. Termination

This Agreement may be terminated with or without cause by either party upon sixty days' written notice thereof to the other party; provided, however, that upon termination, the Association or, if this Agreement or any portion thereof has been assigned as permitted hereunder, then the applicable assignees of this Agreement, shall, at the request of the County, remove all Improvements to the Designated Premises, or, in the alternative, reimburse the County for the cost of such removal. In the event this Agreement is terminated and the County assumes ownership of the Improvements within the Public Right-of-Way, the County does not assume maintenance responsibility unless expressly provided in writing. Any maintenance performed by the County will not constitute an assumption of maintenance responsibility as may be otherwise assigned by Florida Statute or County Code.

16. Notice; Notice of Breach

Notice under this Agreement shall be given to the County at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940 with a copy to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida 32940. Notice under this Agreement shall be given to the Association at 7827 N. Wickham Road, Suite D, Melbourne, FL 32940.

In the event the County determines the Association or any assignee has breached any term or provision of this Agreement, the County shall provide written notice of such breach to breaching party and the breaching party shall have thirty days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonable be cured within such thirty day period, then the breaching party shall have such longer period to cure the breach as is reasonably necessary provided, however, that if the breaching party commences reasonable

action to remedy the breach within such thirty day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

17. Right to Audit Records

In the performance of this Agreement, the Association and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of the Association or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to the Association or any assignee not less than five business days advance notice and shall be respectively retained by the Association and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by the Association or any assignee or provided to the Association or any assignee under the terms of this Agreement, are public records and the Association and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

18. Waiver

The waiver by the County of any of the Association's or any assignee's respective obligations or duties under this Agreement shall not constitute a waiver of any other respective obligation or duty of the Association or any assignee under this Agreement.

19. Entirety and Modifications

This Agreement fully amends, restates, and supersedes that certain Right of Way Use Agreement entered into by the County and the Association on November 30, 2004. This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between the County and the Association as to the subject matter of this Agreement. This Agreement may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein. Attachment A, which is intended to set forth the Designated Premises of this Agreement, may be modified as Improvements are approved pursuant to the terms of this Agreement. This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto.

20. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. Attorney's Fees and Venue

In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by

any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

22. Construction of Agreement

The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

23. Effective Date

This Agreement shall be effective on the last signature date required set forth below.

In witness whereof, County and the Association caused this Agreement to be duly executed in their respective names as of the day and year written below.

Attest:

Board of County Commissioners
of Brevard County, Florida

Scott Ellis, Clerk

Bryan Andrew Lober, Chair
As approved by the Board on July 21, 2020

Approved as to legal form and content:

County Attorney

Grand Haven Master Homeowners Association,
Inc., a Florida corporation

Printed name: _____

Name: Beverly Wheeler
Title: President

Printed name: _____

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, as _____ Grand Haven
Master Homeowners Association, Inc., a Florida corporation, on behalf of the corporation, who
is personally known to me.

Notary Public

Printed Name

ATTACHMENT A

DESIGNATED PREMISES:

Pineda Causeway from the east side of the limited access Interstate 95 right-of-way to the west side of Wickham Road, Fringe Tree Lane, Spicebush Court, Peninsula Circle, Creekwood Drive, Stream Drive, Estuary Boulevard, Caparosa Circle, Ivory Way, Four Lakes Drive, Mansford Place, Orchard Drive, Penrose Circle, Bellflower Court, Mandolin Court and Spinnet Drive rights-of-way, Tract RRR, Tract SSS, Tract TTT, Tract UUU, Tract VVV, Tract QQQ, Tract NNN, Tract LLL, Tract 000, Tract MMM, Tract ZZZ, Tract III, Tract FFF, Tract PPP, Grand Haven Subdivision Phase 1, Phase 3 through Phase 6, According to the Plats thereof, as recorded in the Public Records of Brevard County, Florida.

NOTES:

1. This Attachment is a planning tool. In accordance with the Amended and Restated Right-Of-Way Use Agreement (Grand Haven), Attachment A does not indicate approval of improvements in the public right-of-way. Final locations and other detailed design consideration shall be contingent upon right-of-way utilization permitting and acceptance. Attachment A may be updated with the consent and approval by the County.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9

7/21/2020

Subject:

Approval; Re: Interlocal Agreement between the Brevard County Board of County Commissioners and the City of Cocoa for authorization to reimburse \$199,814 to the City of Cocoa, a portion of construction costs for the new Dr. Joe Lee Smith Community Center., District 2

Fiscal Impact:

\$199,814 from Central Area Recreation District 4 Maintenance Fund 1030 Cost Center 252010

Dept/Office:

Parks and Recreation

Requested Action:

It is requested that the Board of County Commissioners approve the Interlocal Agreement with the City of Cocoa and reimburse the City of Cocoa \$199,814 to assist with a portion of construction costs for the new Dr. Joe Lee Smith Community Center.

Summary Explanation and Background:

The Central Area Parks and Recreation fiscal year 2019/2021 budgeted \$250,000 to design and construct an outdoor kitchen at Travis Park. The City of Cocoa Interim City Manager, Matt Fuhrer, requested that \$200,000 of the \$250,000 be reallocated to assist with the cost of constructing the new Joe Lee Smith Community Center. As the Joe Lee Smith Center expense was not budgeted and due to the dollar amount being requested, staff is requesting Board of County Commissioners approve this Interlocal Agreement and reimbursement.

Clerk to the Board Instructions:

Please return fully executed and recorded agreement to Mary Ellen Donner, 321-633-2046.

Prepared by and Return to:

Anthony A. Garganese
City Attorney of Cocoa
111 N. Orange Avenue, Suite 2000
Orlando, Florida 32802
(407) 425-9566

INTERLOCAL AGREEMENT

(Joe Lee Smith Center)

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this 21st day of July, 2020 ("**Effective Date**") between the **CITY OF COCOA**, a Florida municipal corporation ("**City**") and the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida ("**County**").

W I T N E S S E T H:

WHEREAS, the County and City desire to continue to cooperate in the provision of recreational services and facilities within the jurisdictional limits of the City in an efficient and economical manner for the joint use and benefit of the residents of the City and the County; and

WHEREAS, the County and the City have common power to provide recreational services and facilities for the benefit of the public; and

WHEREAS, Chapter 71-544 of the Laws of Florida established a Recreational Board to govern the Recreational District 4, which is authorized to impose a tax to not exceed nine tenths of one mil on taxable property within the District boundaries, encompassing the City and areas of the County, and for the purpose of providing and maintaining recreational facilities and programs; and

WHEREAS, the Recreational Board prepares a budget of expenditures, which shall be submitted to the Board of County Commissioners no later than August 1st of each year, and the Board of County Commissioners of Brevard County establishes a budget for the Recreation District 4 for the ensuing fiscal year, which determines the amount of the tax to be assessed for said year; and

WHEREAS, the County and the City previously entered into an Interlocal Agreement on April 29, 1986, for the purposes of joint provision of recreational facilities with Recreational District 4 funds, which expired on April 28, 2011, though the County and City have continued to cooperate in the provision of recreational services and facilities since its expiration; and

WHEREAS, the County and the City find that it is in the best interests of its citizens to construct improvements in association with the City's Dr. Joe Lee Smith Center project; and

WHEREAS, the City and the County desire to enter into this Interlocal Agreement for purposes of authorizing the reimbursement of \$199,814.00 to the City by the County for the construction and installation of certain Joe Lee Smith Center improvements; and

NOW, THEREFORE, in consideration of the covenants and agreement hereinafter set forth, to be kept and performed by both parties, the County and the City agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by reference as a material part of this Agreement.
2. **CONDITIONS PRECEDENT.** All rights, obligations and liabilities of the parties under this Agreement shall be subject to the satisfaction of each of the following conditions precedent:
 - 2.1 **Approval.** The approval of this Agreement by both the County's Board of County Commissioners and the City Council of the City of Cocoa.
 - 2.2 **Execution.** The complete execution of this Agreement by the Mayor of the City of Cocoa and the Chair of the Board of County Commissioners.
 - 2.3 **Recordation.** The filing of this Agreement with the Clerk of the Circuit Court in and for Brevard County, Florida, pursuant to Section 163.01(11), Florida Statutes.
3. **STATUTORY AUTHORITY.** This Agreement shall be considered an Agreement pursuant to Section 163.01, Florida Statutes. With respect to the City, this Agreement shall also be in furtherance of the Florida Municipal Home Rule Powers Act (s. 166.011, Florida Statutes, et. seq.).
4. **JOE LEE SMITH CENTER IMPROVEMENTS.**
 - 4.1 **Reimbursement for the Joe Lee Smith Center Improvements.** The County agrees to reimburse the City in the amount of \$199,814.00 for such construction and installation of the following Joe Lee Smith Center improvements (hereinafter "Improvements"):
 - Carpentry Improvements:** Rough Carpentry \$89,900.00, Frame and Hardi 6 Exterior Columns \$2,880.00, Lumber Package \$44,045.00, Wood Trusses \$32,539.00, and Cabinets \$20,050.00;
 - Thermal and Moisture Protection Improvements:** Dampproofing \$8,500.00;
 - Doors and Hardware Improvements:** Access Doors and Panels \$900.00 and Large Mirrors \$800.00; and
 - Equipment Improvements:** Wall Safe (OCI) \$200.00.

A copy of the "Application and Certificate for Payment" dated May 7, 2020, which identifies the Improvements and price per Improvement is attached hereto as

Exhibit A and is incorporated by this reference. Upon completion of the Improvements, the City shall submit to the County an invoice with supporting justification of expenses associated with the Improvements and upon receipt and approval of the County of the invoice, the County shall reimburse the City in the amount of \$199,814.00 consistent with the Florida Prompt Payment Act.

4.2 **Joe Lee Smith Center Operations.** Upon completion, the Joe Lee Smith Center shall remain open for public use consistent with Brevard County Parks and Recreation Procedures.

5. **MISCELLANEOUS TERMS AND CONDITIONS.**

5.1 **Governmental Disputes.** In the event of a conflict under this Agreement, the parties shall adhere to the procedures set forth in Chapter 164, Florida Statutes.

5.2 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

5.3 **Effective Date.** The effective date of this Agreement shall be the date that this Agreement is recorded in the Official Records of Brevard County, Florida pursuant to Section 2.3 of this Agreement.

5.4 **Indemnification.** To the extent permitted by law, the City agrees to indemnify and hold harmless the County from any and all liability and/or claims of any kind arising out of the City's own negligence associated with the construction of the Improvements. To the extent permitted by law, the County agrees to indemnify and hold harmless the City from any and all liability and/or claims of any kind arising out of the County's own negligence.

Neither party intends, and this Agreement shall not be construed, to waive sovereign immunity or the monetary limits, or the type of damages recoverable, under section 768.28, Florida Statutes, as that section may be amended from time to time.

5.5 **Governing Law, Venue and Attorney's Fees.** All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the Laws of the State of Florida. Venue shall be in Brevard County, Florida, and any trial shall be non-jury. In the event of any litigation between the Parties arising out of this Agreement, each Party will bear its own attorney's fees and costs.

- 5.6 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be sent to the following:

County:

Brevard County Parks and Recreation
2725 Judge Fran Jamieson Way, Bldg. B, Suite 203
Viera, Florida 32940

City:

City of Cocoa
Attn: City Manager
65 Stone Street
Cocoa, Florida 32922

[The remainder of this page left intentionally blank.]

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

CITY OF COCOA, FLORIDA

By:


JAKE WILLIAMS, Jr., Mayor

ATTEST:

By:


CARIE SHEALY
City Clerk

Approved by the City Council on: July 8, 2020

Reviewed for legal form and content:


(Assistant) County Attorney

BREVARD COUNTY BOARD OF COUNTY
COMMISSIONERS

By:

BRYAN ANDREW LOBER, Chair

ATTEST:

By:

SCOTT ELLIS, Clerk to Board of
County Commissioners

July 21, 2020

Approved by the Board of Commissioners on: _____

EXHIBIT A
APPLICATION AND CERTIFICATION FOR PAYMENT

EXHIBIT A

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702 (Instructions on reverse side)

PAGE ONE OF 2 PAGES

TO OWNER: City of Cocoa
Accounting Division
65 Stone Street
Cocoa, Florida 32922

PROJECT: Dr. Joe Lee Smith Community Center
Cocoa, Florida

APPLICATION NO.: 12
PERIOD TO: April 30, 2020
P.O. No. 74150
Project No.

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR

FROM CONTRACTOR: W & J Construction Corporation
1005 Viera Blvd Ste 202, Rockledge, FL 32955

VIA ARCHITECT:

CONTRACT DATE: 1/25/2019

CONTRACT FOR: Design Phase - New Construction

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$ 170,144.00
2. Net change by Change Orders	\$ 4,459,761.29
2a. Net change by Direct Purchase	\$ -
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$ 4,629,905.29
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$ 4,294,237.95
5. RETAINAGE: CONSTRUCTION PHASE	
a. 10% of Const. Completed Work (Column D + E on G703)	\$ 429,423.79
b. 10% of Stored Material (Column F on G703)	\$ -
Total Retainage (Line 5a + 5b or Total in Column I of G703)	\$ 429,423.79
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	\$ 3,864,814.16
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$ 3,386,636.81
8. CURRENT PAYMENT DUE	\$ 478,177.35
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$ 765,091.13

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 4,459,761.29	\$ -
Total approved this Month	\$ -	\$ -
TOTALS	\$ 4,459,761.29	\$ -
NET CHANGES by Change Order	\$ 4,459,761.29	

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

CONTRACTOR:

By: 
Chad Russell, Project Manager

Date: April 29, 2020.

State of: Florida
County of: Brevard
Subscribed and sworn to before me this 29th day of April, 2020.

Notary Public: 
My Commission expires: 10/1/23



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ 478,177.35
(Attach explanation if amount certified differs from the amount applied for Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: TSARK ARCHITECTURE, LLC

By:  Date: 5.7.2020
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA DOCUMENT G702 - APPLICATION AND CERTIFICATE FOR PAYMENT - 1992 EDITION - AIA 1992 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-3392 - WARNING: Unlicensed photocopying violates U.S. Copyright laws and will subject the violator to legal prosecution.

G702-1992

Application No.: 12
Period To: April 30, 2020

DR JOE LEE SMITH COMMUNITY CENTER
P.O. #74150
Cocoa, Florida
Summary

Page 1 of 3

Item No.	Description of Work	Original Scheduled Value	Adjusted Scheduled Value	Work Completed		Materials Presently Stored	Total Completed and Stored to Date	%	Balance to Finish	Retainage
				From Previous Application	This Period					
DESIGN PHASE P.O. 74150										
1	ABC Design Services	100,000.00	100,000.00	100,000.00	-	-	100,000.00	100%	-	10,000.00
2	Early Site Demolition	32,257.00	32,257.00	32,257.00	-	-	32,257.00	100%	-	3,225.70
3	Erosion Control	6,960.00	6,960.00	6,960.00	-	-	6,960.00	100%	-	696.00
4	Tree Protection	1,200.00	1,200.00	1,200.00	-	-	1,200.00	100%	-	120.00
5	General Contractor Design Services	15,264.00	15,264.00	15,264.00	-	-	15,264.00	100%	-	1,526.40
6	CA/BS/Board Fees	14,463.00	14,463.00	14,463.00	-	-	14,463.00	100%	-	1,446.30
	Total Design Phase P.O. 74150	170,144.00	170,144.00	170,144.00	-	-	170,144.00	100%	-	17,014.40
CONSTRUCTION PHASE P.O.										
General Conditions										
1	General Conditions	267,631.00	(2,724.71)	264,906.29	272,017.28	20,403.64	242,440.92	92%	21,865.37	24,244.09
1a	ASAC Construction Administration	15,200.00		15,200.00	12,758.00	1,174.54	13,942.54	92%	1,257.46	1,394.23
1b	Construction	7,500.00		7,500.00	-	-	-	0%	7,500.00	-
2	Relocation Conditions	11,375.00		11,375.00	11,375.00	-	11,375.00	100%	-	1,137.50
3	Concrete	233,920.00		233,920.00	233,920.00	-	233,920.00	100%	-	23,392.00
3a	- Retaining Wall Foundations	15,810.00		15,810.00	15,810.00	-	15,810.00	100%	-	1,581.00
3b	- Mechanical Pads	2,000.00		2,000.00	2,000.00	-	2,000.00	100%	-	200.00
4	Concrete Polishing	7,649.00		7,649.00	-	7,649.00	7,649.00	100%	-	764.90
5	Masonry Buildings and Demolition	319,815.00		319,815.00	319,815.00	-	319,815.00	100%	-	31,981.50
5a	- Retaining Wall Masonry	13,840.00		13,840.00	13,840.00	-	13,840.00	100%	-	1,384.00
6	Structural Steel	144,553.00		144,553.00	144,553.00	-	144,553.00	100%	-	14,455.30
7	Rough Carpentry	89,900.00		89,900.00	89,900.00	-	89,900.00	100%	-	8,990.00
7a	- Frame and Hand & Exterior Columns	2,880.00		2,880.00	2,880.00	-	2,880.00	100%	-	288.00
8	Lumber Packages	44,045.00		44,045.00	44,045.00	-	44,045.00	100%	-	4,404.50
9	Wood Trusses	32,539.00		32,539.00	32,539.00	-	32,539.00	100%	-	3,253.90
10	Chimney	20,050.00		20,050.00	-	20,050.00	20,050.00	100%	-	2,005.00
Thermal and Moisture Protection										
11	Exterior Insulation	7,067.00	7,110.00	10,162.00	10,162.00	-	10,162.00	100%	-	1,016.20
12	Roof Insulation	5,960.00		5,960.00	5,960.00	-	5,960.00	100%	-	596.00
13	Stucco	143,178.00		143,178.00	143,178.00	-	143,178.00	100%	-	14,317.80
14	Roofing	149,738.00	(3,885.00)	145,853.00	145,853.00	-	145,853.00	100%	-	14,585.30
15	Paints, Finishes, and Trims	41,618.00		41,618.00	37,456.20	4,161.80	41,618.00	100%	-	4,161.80
16	Joint Sealants	16,240.00		17,091.00	17,091.00	-	17,091.00	100%	-	1,709.10
16a	Demolition	8,500.00	851.00	8,500.00	8,500.00	-	8,500.00	100%	-	850.00
17	Doors, Frames, and Hardware	67,202.00		67,202.00	58,182.00	-	58,182.00	87%	9,020.00	9,018.20
18	Access Doors and Panels	900.00		900.00	900.00	-	900.00	100%	-	90.00
19	Rolling Counter Door (Aluminum)	2,997.00		2,997.00	-	-	-	0%	2,997.00	-
20	Aluminum Framed Entrances	87,612.00		87,612.00	87,612.00	-	87,612.00	100%	-	8,761.20
21	Lens Mirrors	900.00		900.00	-	-	-	0%	900.00	-

Application No.: 12
Period To: April 30, 2020

DR JOE LEE SMITH COMMUNITY CENTER
P.O. #74150
Cocoa, Florida
Summary

Page 2 of 3

Item No.	Description of Work	Original Scheduled Value	Adjusted Scheduled Value	Work Completed		Materials Previously Stored	Total Completed and Stored to Date	%	Balance to Finish	Retainage
				From Previous Application	This Period					
22	Finishings									
22a	Grout Board and Framing	146,615.00	146,615.00	146,615.00	-	-	146,615.00	100%	-	14,661.50
23	Acoustic Ceiling	16,300.00	16,300.00	8,150.00	5,705.00	-	13,855.00	85%	2,445.00	1,385.50
24	Flooring and Tile	41,200.00	30,900.00	30,900.00	10,300.00	-	41,200.00	100%	-	4,120.00
25	Base Floorings	5,980.00	5,980.00	-	-	-	-	0%	5,980.00	-
26	Spots Flooring By Corner	54,750.00	54,750.00	54,750.00	-	-	54,750.00	100%	-	5,475.00
27	Painting	35,900.00	35,900.00	31,365.00	5,635.00	-	35,900.00	100%	-	3,690.00
28	Specialties									
28a	Staples for Interior	800.00	800.00	-	-	-	-	0%	800.00	-
28b	Metal Sign Board - Allowance	30,000.00	30,000.00	-	-	-	-	0%	30,000.00	-
29	Knock Box	475.00	475.00	-	-	-	-	0%	475.00	-
30	Toilet Compartments	7,650.00	7,650.00	-	7,650.00	-	7,650.00	100%	-	765.00
30a	Toilet Accessories and RS Roms	5,870.00	5,870.00	-	5,870.00	-	5,870.00	100%	-	587.00
31	Convey Guards	735.00	735.00	-	735.00	-	735.00	100%	-	73.50
32	Flnt Substitutions and Cabinets	1,033.00	1,033.00	-	1,033.00	-	1,033.00	100%	-	103.30
33	Enclomment									
33a	Kitchen Enclosure	25,499.00	25,499.00	-	25,499.00	-	25,499.00	100%	-	2,549.90
34	Spots Enclosure	20,050.00	20,050.00	20,050.00	-	-	20,050.00	100%	-	2,005.00
34a	- Mosaics	28,000.00	2,500.00	20,500.00	-	-	20,500.00	100%	-	2,050.00
34b	- Wall Pyle	3,500.00	4,000.00	7,500.00	6,500.00	1,000.00	7,500.00	100%	-	750.00
34c	- Scaffolding - Allowance	9,000.00	9,000.00	8,135.99	0.01	-	8,134.00	90%	866.00	813.40
35	Wall Sfrs (DRCD)	200.00	200.00	-	-	-	-	0%	200.00	-
36	Fire Suppression									
36a	Fire Sprinkler	44,500.00	44,500.00	42,500.00	2,000.00	-	44,500.00	100%	-	4,450.00
37	Plumbing	143,480.00	143,480.00	107,610.00	33,870.00	-	143,480.00	100%	-	14,348.00
38	HVAC	376,878.00	33,515.63	410,344.63	307,758.47	86,172.97	353,930.94	90%	15,413.78	35,393.08
39	Electrical									
39a	Electrical	323,927.00	35,994.41	360,921.41	288,737.13	35,092.14	324,829.27	90%	36,092.14	32,482.93
39b	- Redesign One Bell Field Units for RS - Allowance	5,000.00	5,000.00	-	-	-	-	0%	5,000.00	-
40	PA System - Allowance	10,000.00	10,000.00	-	-	-	-	0%	10,000.00	-
41	Site Construction									
41a	Landscaping and Irrigation	46,833.00	46,833.00	-	2,341.75	-	2,341.75	5%	44,491.25	224.18
42	- Plan Change Modification - Allowance	3,800.00	3,800.00	-	-	-	-	0%	3,800.00	-
43	Surveying	370,411.00	370,411.00	259,287.70	92,002.75	-	351,890.45	95%	18,520.55	35,189.05
44	Security	24,630.00	24,630.00	12,315.00	7,389.00	-	19,704.00	80%	4,926.00	1,970.40
45	Security Control	777.00	777.00	777.00	-	-	777.00	100%	-	77.70
46	Control and Gates	5,342.00	5,342.00	3,671.00	-	-	3,671.00	69%	2,671.00	267.10
47	Gate Pyle	800.00	800.00	-	800.00	-	800.00	100%	-	80.00
48	Accessories	614.00	614.00	-	-	-	-	0%	614.00	-
49	Remediate Pool and Deck - Allowance	220,000.00	(89,125.00)	130,875.00	150,865.00	-	150,865.00	100%	-	15,086.50
49a	Other Pool Improvements	-	41,045.25	41,045.25	-	-	-	0%	41,045.25	-
49b	-POOL CON 06 - Leak Detection and Repair	-	1,100.00	1,100.00	-	-	1,100.00	100%	-	110.00
49c	-POOL CON 07 - Labor Demolition	-	1,595.49	1,595.49	-	-	1,595.49	100%	-	159.55

Application No.: 12
Period To: April 30, 2020

DR JOE LEE SMITH COMMUNITY CENTER
P.O. #74150
Cocoa, Florida
Summary

Page 3 of 3

Item No.	Description of Work	Original Scheduled Value	Adjusted Scheduled Value	Work Completed		Materials Previously Stored	Total Completed and Shared to Date	%	Balance to Which	Balance
				From Previous Application	This Period					
	-POOL COR 08 - Recessed/Refract Retaining Wall		4,840.00	4,840.00	-	-	4,840.00	100%	-	484.00
	-POOL COR 09 - New Fences for Pool		9,638.00	9,638.00	-	-	9,638.00	50%	4,819.00	481.90
	-POOL COR 10 - Out and Remove Pool Deck Edge		2,200.00	2,200.00	-	-	2,200.00	100%	-	220.00
	-POOL COR 11 - Plumbing		7,003.26	7,003.26	-	7,003.26	7,003.26	100%	-	700.33
		67,423.00								
50	Paint Pool Building to Match New	4,200.00	4,200.00	-	-	-	-	0%	4,200.00	-
51	Resurface Basketball Court	9,400.00	9,400.00	-	9,400.00	-	9,400.00	100%	-	940.00
52	Resurface - Allowance	100,000.00	100,000.00	40,000.00	52,000.00	-	92,000.00	92%	8,000.00	8,000.00
53	RoboNet Probi Restroom - Allowance	25,000.00	25,000.00	9,154.61	-	-	9,154.61	37%	15,845.39	915.46
	Subtotal - Construction Phase	3,910,308.00	72,649.32	3,982,957.32	3,236,551.87	448,787.28	3,685,329.13	92%	287,645.19	288,530.81
54	General Liability Insurance	28,468.00	28,468.00	28,468.00	23,182.15	3,108.54	26,290.79	92%	2,178.32	2,628.07
55	Subcontractor Insurance	14,454.00	14,454.00	9,328.00	-	-	9,328.00	65%	5,126.00	852.80
56	Bonds	48,723.00	(851.00)	47,872.00	44,008.50	-	44,008.50	92%	3,863.50	4,602.50
57	Contingency	130,000.00	(179,413.17)	884.83	-	-	-	0%	884.83	-
58	Construction Manager Fee	247,917.00	247,917.00	201,877.54	27,070.11	-	228,947.65	92%	18,969.35	22,894.76
59	COR 01 - Add Locking Protection	-	17,748.00	17,748.00	17,748.00	-	17,748.00	100%	-	1,774.80
60	COR 02 - Crane for Pavilion Move	-	5,507.25	5,507.25	5,507.25	-	5,507.25	100%	-	550.73
61	COR 03 - Add Herring Trusses	-	7,738.00	7,738.00	7,738.00	-	7,738.00	100%	-	773.80
62	COR 04 - Light Pole Removal	-	9,104.46	9,104.46	9,104.46	-	9,104.46	100%	-	910.45
63	Remove Pool up to City of Cocoa	-	514.19	514.19	514.19	-	514.19	100%	-	51.42
64	COR 10 - Add Flag Pole	-	4,187.00	4,187.00	-	2,093.50	2,093.50	50%	2,093.50	209.35
65	COR 14 - Add Wireless Module for Fire Alarm	-	1,082.95	1,082.95	-	541.48	541.48	50%	541.47	54.15
66	COR 15 - Add 2-Way Radio Training	-	1,890.00	1,890.00	-	1,170.00	1,170.00	62%	720.00	117.00
67	COR 16 - Add 8 Fences along West Boundary	-	9,783.00	9,783.00	-	5,869.80	5,869.80	60%	3,913.20	586.98
	SUBTOTAL CONSTRUCTION PHASE	4,379,868.00	-	4,379,868.00	3,553,598.97	488,619.68	4,044,287.65	92%	335,667.34	404,420.17
	Change Orders									
	Pool COR 01 - Roof Replacement	14,944.89	14,944.89	14,944.89	-	-	14,944.89	100%	-	1,494.48
	Pool COR 02 - Add Heater to Pool	23,611.94	23,611.94	23,611.94	-	-	23,611.94	100%	-	2,361.19
	Pool COR 03 - Doors and Frames at Pool House	19,085.53	19,085.53	19,085.53	-	-	19,085.53	100%	-	1,908.55
	Pool COR 04 - Spray Texture and Paint Pool Deck	5,024.05	5,024.05	5,024.05	-	-	5,024.05	100%	-	502.41
	Pool COR 05 - Misc Quarry at Pool House	17,225.88	17,225.88	17,225.88	-	-	17,225.88	100%	-	1,722.59
		79,892.30								
	TOTAL CONSTRUCTION PHASE	4,459,760.30	-	4,459,760.30	3,592,789.79	537,508.16	4,126,092.85	92%	335,667.34	413,408.35
	TOTAL P.O. 74150	4,629,893.28	-	4,629,893.28	3,763,629.79	630,388.16	4,324,237.85	92%	335,667.34	429,432.79

**DR. JOE LEE SMITH
P.O. 74150
CONTINGENCY SUMMARY**

BT #	Contingency Items	Chg in Scope Items	Additional Fee	Vendor	Cost Code	Explanation	Line #
	130,000.00			Beginning Balance			
COR 01		(17,748.00)		Randall Electric	26 00 00	section below original scope	58
COR 02		(5,507.25)		Bevel Brothers	32 33 05	crane rental for pavilion move	60
COR 03		(7,738.00)		TrussWood	06 17 31	add mansard trusses	61
COR 04		(9,104.46)		Bevel Brothers	32 33 05	light pole removal	62
COR 04		5,500.00		Randall Electric	26 00 00	existing light pole demo in electrical sub	39
COR 05	(3,110.00)			Southern Foam	07 21 19	insulation contract buyout	11
				92,292.29	Contingency Balance at 7/31/2019- Pay App #3		
				92,292.29	Contingency Balance at 8/31/2019- Pay App #4		
COR 06		(2,500.00)		Storagecraft	11 66 23	change bleacher configuration	34a
		(514.19)		City of Cocoa	01 41 26	permit fees paid	63
				89,278.10	Contingency Balance at 9/30/2019- Pay App #5		
COR 09		(1,500.00)		Storagecraft	11 66 23	protective padding for volleyball	34b
COR 09		(2,500.00)		Storagecraft	11 66 23	additional wall panels	34b
COR 10		(4,187.00)		Florida Flag and Pennant	10 75 00	add flag pole	64
COR 12		(33,515.62)		HM2	23 00 00	Rev 5 changes	38
COR 13		(39,769.70)		Randall Electrical	26 00 00	Rev 5 changes	39
				7,805.78	Contingency Balance at 10/31/2019- Pay App #6		
				7,805.78	Contingency Balance at 11/30/2019- Pay App #7		
		3,685.00		G&G Roofing	07 25 01	change from premium to pro shingles	14
	49,200.00			Family Pools, Inc.	32 18 40	contract buyout	49
				60,890.78	Contingency Balance at 12/31/2019- Pay App #8		

**DR. JOE LEE SMITH
P.O. 74150
CONTINGENCY SUMMARY**

				60,890.78	Contingency Balance at 1/31/2020- Pay App #9	
	(47,488.00)			32 18 40	put pool contract buyout back in pool funds	49a
				13,402.78	Contingency Balance at 2/29/2020- Pay App #10	
				13,402.78	Contingency Balance at 3/31/2020- Pay App #11	
COR 14	(1,082.95)		Randall Electric	26 00 00	add wireless module for fire alarm	65
COR 15	(1,950.00)		Modern Media		add 2-way radio testing	66
COR 16	(9,783.00)		American Fence	32 31 00	add 6' chain link along west boundary	67
				586.83	Contingency Balance at 4/30/2020- Pay App #12	
	128,602.00	(128,015.17)	-	Subtotal		
	\$ 586.83			Current Contingency Balance		

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: City of Cocoa	
2. Fund/Account #:	3. Department Name: Parks & Recreation
4. Contract Description: Interlocal Agreement for the Dr. Joe Lee Smith Center	
5. Contract Monitor: Melissa Renninger	7. Contract Type:
6. Dept/Office Director: Mary Ellen Donner	INTERGOVT/LOCAL

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Adams, MistyS <small><i>Digitally signed by Adams, MistyS Date: 2020.07.13 09:06:29 -04'00'</i></small>	07/13/2020
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small><i>Digitally signed by Lairsey, Matt Date: 2020.07.13 10:44:14 -04'00'</i></small>	07/13/2020
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT REVIEW AND APPROVAL FORM


SECTION I - GENERAL INFORMATION

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6. Dept/Office Director: Mary Ellen Donner	

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Adams, MistyS <small>Digital Signature by Adams, MistyS Date: 2020.07.13 09:06:06 -04:00</small>	<u>7/13/2020</u>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>7/15/2020</u>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.10

7/21/2020

Subject:

Approval, Re: Renewal of Leases with the Martin Andersen Senior Center, Inc. (District 2) and the Wickham Park Senior Center Association, Incorporated (District 4)

Fiscal Impact:

Approval of this action will result in revenue in the amount of \$6,000 annually to the Parks and Recreation Department.

Dept/Office:

Parks and Recreation

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Resolutions and Renewal of Leases with the Martin Andersen Senior Center, Inc. and the Wickham Park Senior Center Association, Incorporated.

This action requires a super-majority vote by the Board pursuant to Code Section 2-247 Non-Competitive lease or sale of county property.

Summary Explanation and Background:

The County has contracted the operation of the Senior Centers since the mid-1970s; the Martin Andersen Senior Center is located in Rockledge and the Wickham Park Senior Center is located in Melbourne. The Senior Center organizations are private Not-for-Profit corporations. These partnerships enables all socioeconomic levels of the senior population the opportunity to participate in programs and services designed to meet their recreational, physical, financial, health, social, nutritional and educational needs.

On August 18, 2015 the Board of County Commissioners approved individual leases for the operation of the Senior Centers for a five-year term. Approval of the lease renewals will grant an additional five-year term extending the contracts to August 17, 2025. The lease renewal documents have been reviewed and approved by both the County Attorney and Risk Management.

Brevard County Code of Ordinances, Chapter 2, Section 2-241 through Section 2-251, establishes procedures for the sale, leasing and donation of real property. It requires the intent and County Code to be published on the County website at least five days prior to the public meeting and also requires a supermajority vote by the Board. The posting requirement was successfully completed on July 15, 2020.

Clerk to the Board Instructions:

Please call Melissa at 350-9125 when the documents are ready for pick up.



Renewal of Lease

This Renewal of Lease is made by and between the Brevard County Board of County Commissioners, a political subdivision of the State of Florida, (hereinafter referred to as “County”) and the Martin Andersen Senior Center, Inc., a Not for Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as “Lessee”)

Witnesseth:

Whereas, the parties hereto previously entered into a Lease on August 18, 2015 (hereinafter referred to as “Lease” and attached as Exhibit “A”), more specifically identified as Contract Number 3075, for real property located in Brevard County, Florida, commonly known as the Martin Andersen Senior Center, hereinafter referred to as “Senior Center”, located at 1025 South Florida Avenue, Rockledge, Florida 32955; and

Whereas, the Lease was for a term of five years; and

Whereas, the Lessee leases the Senior for a sum of Two Hundred Fifty Dollars paid monthly; and

Whereas, the parties desire to renew the Lease for an additional term of five years.

Now, Therefore, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

1. The above recitals are true and correct and are incorporated into this Renewal of Lease.
2. Pursuant to Section 3. of the Lease, the term of the Lease shall be renewed for an additional five-year term beginning on August 18, 2020 through August 17, 2025.
3. All terms and conditions of said Lease not inconsistent with the provisions of this Renewal of Lease, shall remain in full force and effect.

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

Attest:

Board of County Commissioners of
Brevard County, Florida

Scott Ellis, Clerk of Court

By: _____
Bryan Andrew Lober, Chair

As Approved by the Board on 7/21/2020.

Reviewed for Legal Form and Content

Abigail Forrester Jorandby 6/29/2020
Abigail Forrester Jorandby

Martin Andersen Senior Center, Inc.

By: Marcie J. Cummings 7/6/20
Marcie J. Cummings, President Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 6th day of July, 2020 by Marcie J. Cummings, President of Martin Andersen Senior Center, Inc. He is personally known to me or has produced _____ as identification.

Denise J. Hayes
Notary Public

Denise J. Hayes
Typed/Printed Name



DENISE J HAYES
MY COMMISSION # GG 045023
EXPIRES: January 10, 2021
Bended Thru Budget Notary Service

Exhibit "A"

LEASE

THIS LEASE, made and entered into this 18 day of August, 2015, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and the **MARTIN ANDERSEN SENIOR CENTER, INC.**, a Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as the "Lessee").

WHEREAS, the Lessee desires to lease a County owned facility which is a part of the County public park known as **Martin Andersen Senior Center** and is for the purpose of serving as a senior center (hereinafter referred to as the "Senior Center");

WHEREAS, the Lessee has an interest in providing programs and services to the senior population of the County, is well situated to do so, and has previously contracted with the County to provide such services;

WHEREAS, the County has an interest in allowing programs and services to be provided to the senior population of the County;

WHEREAS, the County has by Resolution, a copy of which is attached hereto as **Exhibit "A"**, determined that these programs and services provided will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitute a service that could be provided by local government, and are compatible with the County purposes for which the Senior Center was constructed.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

- 1. Leased Property.** The County hereby leases to the Lessee and Lessee hereby leases from the County, the Senior Center as presently constituted, commonly known as the **Martin Andersen Senior Center, 1025 South Florida Avenue, Rockledge, Florida 32955** and described in **Exhibit "B"**. The Senior Center includes all improvements to the leased real property, whether constructed before or after the date of the Lease, and all fixtures, furniture, equipment and supplies, if any, placed on the leased property by the County.
- 2. Representation by Lessee.** The Lessee represents that it is a Florida Not For Profit organization under the laws of Florida as described in Section 501(c)(3) of the Internal Revenue Code as amended, and is exempt from federal income tax pursuant to Section 501(a) of said Code.
- 3. Term.** This Lease shall be effective from the date of the last signature for a period of five (5) years. It is hereby mutually agreed and understood that the Lessee may request renewal of this Lease for an additional five (5) year term by written notice from Lessee at least 60 days prior to the expiration date of this Lease.

4. **Rent.** The rent for the Senior Center shall be Two Hundred Fifty Dollars (\$250.00) per month, due the 5th day of each month and payable in advance by the Lessee. It is hereby mutually agreed and understood that the rent may be negotiated annually.
5. **Utilities.** The Lessee shall pay costs of all public utility charges which shall include telephone, electric, gas, water, sanitary sewer, and garbage, as applicable which is provided to the Senior Center by the County, City or any other public agency or public utility.
6. **General Liability Insurance.** Lessee agrees to provide and maintain at all times during the term of this Lease, without cost or expense to the County, policies of insurance generally known as general liability policies insuring the Lessee against any and all claims, demands and causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management or control of the Senior Center and any improvements thereon. The County shall be added on to the policy as an additional insured. The General Liability Insurance shall be issued by responsible insurance companies and in a form acceptable to the County, protecting and insuring against all the foregoing with combined single limits of not less than One Million dollars (\$1,000,000) for Bodily Injury and Property Damage and Fire Legal Liability in the amount of One Hundred Thousand dollars (\$100,000). All personal property housed or placed at the leased Senior Center shall be at the risk of the Lessee, whether owned by the County or the Lessee, and the County shall not be liable for any loss or damage to the personal property of the Lessee or others located thereon for any cause whatsoever. The Lessee agrees and understands that the County does not and shall not carry liability, theft or fire insurance on said property to cover the Lessee's interest therein.
7. **Insurance Certificates.** Lessee shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said certificates shall provide that the County is an additional insured, and that County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
8. **Indemnification.** The Lessee shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with the use, occupation, management or control of the Senior Center or any improvements or any furniture, furnishings, equipment and fixtures utilized in connection with the Senior Center by the Lessee unless such claims, damages, expenses, or losses are caused solely by acts of the County, its employees, or other persons not a party to this Lease acting on the County's request. Lessee agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with the Lessee's use, occupation, management or control of said Senior Center and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding. Likewise, the County shall indemnify and defend the Lessee and its employees, officers, and agents from all claims, damages, losses, and expenses,

including attorneys fees, caused solely by the County's use, occupation, or management of the Senior Center or any improvements made by the County unless such claims, damages, or losses are caused by the acts of the Lessee, its employees, officers, members or other persons not a party to this Lease acting on/at the Lessee's request. The County agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the Lessee as the sole result of the County's use, occupation or management of said Senior Center and that it will satisfy, pay and discharge any and all judgments that may be entered against the Lessee in such action or proceeding. However, nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9. **Obligations of the Lessee.** The Lessee shall keep the interior of the building clean and orderly in accordance with any applicable laws, regulations or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions of the Senior Center. Lessee shall maintain said property in its present condition, ordinary wear and tear excepted. All improvements and any changes made by Lessee to the interior of building shall be at the cost of the Lessee and subject to prior written approval by the County.

The Lessee, at its cost, shall be responsible for all interior and exterior signage it desires and signs which the Lessee desires in order to advertise its programs, excluding parking signs. However, all signage must comply with Americans with Disabilities regulations and must be preapproved by the County. Such signs must be in compliance with any applicable jurisdiction's code or ordinance.

The Lessee shall have control and responsibility for County owned (presently or subsequently installed) equipment and other depreciable property at the Senior Center as described in **Exhibit "C"**. Such property shall be considered a part and portion of the County's property covered in this Lease. None of the County owned property or equipment, if any is present, is to be sold, loaned, rented, used or moved outside of the Senior Center without the written approval of the Parks and Recreation Department Director or designee.

The Lessee shall promptly notify the County of the necessity of any and all maintenance and repairs needed to the exterior and/or the utility systems for the Senior Center.

All inspections, maintenance, repair monitoring and costs associated with the security systems shall be the responsibility of the Lessee. The Lessee shall pay the expense of fire alarm monitoring. Lessee understands that the Senior Center must be operated in such a fashion to comply with all federal, state and local all codes in order to operate the Senior Center or otherwise carry out the programs and activities authorized by the Lessee in compliance with this lease.

The Lessee agrees to cooperate with the County in all matters pertaining and relating to the operation of the Senior Center. This shall include providing space for public meetings, health and wellness services, and any

other County sponsored programs, services, events and meetings, under the condition that the scheduling of such events would not interfere with previously scheduled Lessee events.

10. Obligations of the County. The County shall maintain the building's exterior in good condition. Maintenance and repair of the exterior structure includes rodent and termite control, exterior painting and sealing. The County shall be responsible for the cost and provision of ground maintenance around the exterior of the structure, which will include irrigation system maintenance for the lawn. The County shall mow, edge, and fertilize the lawns; weed and mulch landscapes; trim hedges, shrubs, and small trees; remove dead, damaged or unwanted trees; and water the lawns, landscapes and gardens. The County shall be responsible for costs of the water retention area maintenance for the leased Senior Center so that areas meet requirements of federal, state, and local regulations.

The County shall be responsible for maintenance and repair of the sidewalks and parking lot, including parking signs, parking lot light poles including light bulbs, outside seating, and flagpole.

All inspections, maintenance and repair of the fire alarm and fire sprinkler systems, and fire extinguishers, shall be the responsibility of the County.

The County shall be responsible for any needed repair and/or replacement of the HVAC system and plumbing systems.

The County shall be responsible for the provision of maintenance, repair, and bear the costs of such, for the electrical distribution system from the load side of the meter can to all outlets. The County shall be responsible for replacement of exterior light bulbs and all ballasts.

11. Violation of Provisions. Any violation of these provisions will constitute a breach of the conditions of this Lease and may result in the cancellation of same. The County shall notify the Lessee of any violation of the provisions of this Lease in writing. Such notice shall identify the provision which is being violated and how it is being violated. The Lessee shall then have sixty (60) days within which to fix the violation. It is the intent of this provision for the parties to work together cooperatively towards a positive resolution of all issues. However, if the violation is not fixed or addressed in a reasonable fashion to the County's reasonable satisfaction, the County has the right to issue a notice of termination/cancellation effective immediately at the end of the sixty day period. In the event of cancellation or termination of this Lease, Lessee shall remove its personal property from the Senior Center. Any personal property not removed within ninety (90) days from the effective date of termination of the Lease shall be subject to becoming the property of the County.

12. Permitted Activities of the Lessee at the Senior Center. The Senior Center shall be operated to provide well rounded programs and services to the senior population of Brevard County so that one activity does not dominate the availability of use of the Senior Center. The Lessee shall provide a calendar of events on a quarterly basis subject to approval by the County. The Lessee shall strive to develop a variety of diverse

programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County. The Board of Directors of the Lessee shall not have sole authority to deny such programs and services as stated above to the senior population of the county with regard to race, color, religious creed, national origin, ancestry, age, gender, marital status, or disability.

The ongoing operation of the Senior Center will be the responsibility of the Board of Directors of the Lessee in coordination with the County. A representative from the County shall serve as a non-voting member on the Board of Directors. When requested, the Lessee shall provide a list to include names, addresses, and phone numbers of the Board of Directors of the Lessee, and additionally shall provide notification of any changes to said officers that may occur in the course of the year.

Revenues may be derived by the Lessee from memberships, fund-raising events, donations, special activities, shared revenues obtained from admission to activities sponsored and operated by other senior organizations, some participation from community-based organizations and for occasional use by other age groups. The County shall have the option to rent out the Senior Center during non-dedicated/usage time. The County shall supply notice fourteen (14) days in advance of said usage and direct costs shall apply.

13. **Reverter and Right of Re-Entry and Repossession.** In the event the Senior Center is not used or ceases to be used for the public purposes set forth herein, the Lease shall immediately cease and the Senior Center shall revert to the County which shall thereafter have the right to re-enter and repossess the Senior Center.
14. **ADA Compliance.** The County and Lessee shall conform to current requirements of the Americans with Disabilities Act in the performance of this Lease, and shall not cause or place on the Senior Center any condition causing the Senior Center to become non-compliant. The parties shall work together to cure any known violations of the ADA that may occur.
15. **Hours of Operation.** For normal operations, the Lessee assures that the Senior Center will be open an average of 35 daytime hours per week with the exception of those weeks which include a holiday or in the event of an emergency. During all hours of operation of the Senior Center by the Lessee or during all hours when the Senior Center is utilized for programs or services sanctioned by the Lessee, the Lessee shall be responsible for any and all damage to the Senior Center, ordinary wear and tear excepted. The Lessee shall provide either paid staff or designate members of its organization to supervise use of the Senior Center and to secure the Senior Center following use by the Lessee, or any other groups sanctioned by the Lessee.
16. **Emergency Services.** In the case of a general emergency as declared by the County, the County retains the right to immediately resume occupation, management, and maintenance of the Senior Center, to use the facility to meet any emergency needs for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County. The Lessee will be provided as much notice as is practicable dependent on

how suddenly the need arises and predictability of how long the need will continue. The County shall not be responsible for the damage, loss of property or income created by the use of the Senior Center by agencies which support the emergency response and recovery such as Red Cross, Federal Emergency Management Agency and others. The County and Lessee shall work directly with such support agencies to recover the cost of restoration, lost equipment, and supplies used. During the period in which the County or other governmental or non-governmental agency occupies or manages the Senior Center, Lessee occupancy and any duties or obligations hereunder will be suspended. Any maintenance, damage, restoration, or repair necessitated during any suspension of the Lessee's occupancy under this Lease will be the responsibility and the expense of the County occupancy under this Lease will be the responsibility and the expense of the County. Repairs, rehabilitation, restoration or maintenance, the need for which arises as a result of such emergency suspension of the Lessee's occupancy, shall all be diligently completed by the County, at the expense of the County prior to the Lessee reoccupying the Senior Center. As used herein, an "emergency" will be defined as a period of civil unrest or riot, a period during which the military needs the Senior Center for a period of time relating directly to defense of the nation and a likely attack of the nation, a period during which weather such as a hurricane or tornado is likely to cause damage to the community and the Senior Center, is needed for public shelter, distribution of emergency supplies such as food or water, or other related event, or any other circumstance designated by the Emergency Operations Center, "E.O.C." as an emergency.

17. Lessee's Assignment, Sublease or License for Occupation by Other Persons. Lessee agrees not to assign or sublease the Senior Center, any part thereof, or any right or privilege connected therewith, without first obtaining the County's written consent, which consent the County may withhold in its sole discretion. Consent on one occasion by the County shall not be consent to a subsequent assignment, sublease, or occupation by other persons. Lessee's unauthorized assignment, sublease or license to occupy shall be void, and shall terminate the Lease at the County's option. Lessee's interest in this Lease is not assignable by operation of law, nor is any assignment of its interest herein, without the County's written consent. Nothing herein is intended to prevent the Lessee from entering into short-term use/rental lease with third parties for up to and including three (3) days (no overnight activities); however, even under such circumstances the Lessee shall remain responsible for each and every of its obligations under this Lease. The Lessee shall be responsible for ensuring that all short term use or rental leases shall only be allowed for activities that are consistent with the remainder of the terms of this Lease.

18. Alterations, Changes and Additions. No structural changes, alterations or additions shall be made by the Lessee to the Senior Center without the prior written consent of the County. Any such alterations, changes and additions shall remain for the benefit of and become the property of the County.

19. No Use that Increases Insurance Risk. The Lessee shall not use the Senior Center in any manner, even in its use for the purposes for which the Senior Center is leased, that will increase the risk covered by insurance on the building where the Senior Center is located, so as to increase the rate of insurance on the Senior Center, or

to cause cancellation to any insurance policy covering the building. Lessee further agrees not to keep at the Senior Center, or permit to be kept, used, or sold thereon, anything prohibited by the policy of fire insurance covering the Senior Center. Lessee shall comply, at its own expense, with all requirements of insurers necessary to keep in force the fire and public liability insurance covering the Senior Center.

- 20. Licenses, Permits, and Taxes.** Lessee agrees to secure and maintain all licenses and permits required to operate, including any applicable sales or use tax, which shall be imposed or assessed by any and all governmental authorities, in connection with the business or operation conducted under this Lease, and to meet all federal, state, county and municipal laws, ordinances, policies and rules. Any such licenses and permits shall be maintained and posted, if required, at appropriate places at the Senior Center within thirty (30) days of the execution of this lease by both parties. If applicable, a Bingo Class "A" License shall be obtained on an annual basis and a copy shall be provided to the County.
- 21. No Waiver of Covenants or Conditions.** The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally.
- 22. Successors in Interest.** This Lease and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.
- 23. Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- 24. Venue.** Venue for any legal action brought by any party to this Lease to interpret, construe or enforce this Lease shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
- 25. Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
- 26. Governing Law.** This Lease shall be deemed to have been executed and entered into within the State of Florida and this Lease, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
- 27. Compliance with Statutes.** It shall be the Lessee's and the County's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.
- 28. Independent Contractor.** Lessee shall perform the services under this Lease as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this

Lease shall be interpreted or construed to constitute the Lessee or any of its agents or employees to be the agent, employee or representative of the County.

- 29. Right to Audit Records.** The Lessee shall prepare an annual financial statement and shall submit same to the Area Manager. In the performance of this Lease, the Lessee shall keep books, records, and accounts of all activities related to this Lease, in compliance with general accounting procedures. Books, records and accounts related to the performance of this Lease shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the agency for a period of three (3) years after the termination of this Lease. All records or documents created by Lessee or provided to Lessee by the County in connection with the activities or services provided by County under the terms of this Lease, are public records and the Lessee agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.
- 30. Construction of Lease.** The parties hereby acknowledge that they have fully reviewed this Lease and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Lease shall not be construed against any party as if they were the drafter of this Lease.
- 31. Surrender of Premises.** Lessee shall surrender the Senior Center to the County at the end of the Lease term in generally the same condition as when Lessee took possession, allowing for changes and modifications agreed to by the parties over time, reasonable wear and tear, damages by acts of God, including fire and storm. The Lessee shall remove all business signs or symbols placed on the Senior Center by the Lessee before surrendering the Senior Center and restore the portion of the Senior Center on which they were placed in the same condition as before placement. Lessee shall have ninety (90) days notice to surrender.
- 32. Partial Destruction of Premises.** Partial destruction of the Senior Center shall not render this Lease void, or terminate it except as herein provided. If the Senior Center is partially destroyed during the term of this Lease, County may endeavor to make repairs, providing the County has the fiscal means to do so, and when such repairs can be made in conformity with local, state, and federal laws and regulations, within ninety (90) days of the partial destruction. If the repairs cannot be so made in ninety (90) days and the County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Lease. If the leased Senior Center is more than one-third destroyed, County or Lessee may at its option terminate this Lease, giving ninety (90) day notice to Lessee.
- 33. County's Entry for Inspection and Maintenance.** The County reserves the right to enter the -Senior Center at reasonable times to inspect, to perform required maintenance and repair, or to make additions or alteration to any part of the building in which the Senior Center under Lease is located, and Lessee agrees to permit the County to do so. The County may, in connection with such alterations, additions, or repairs, erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment without incurring liability

to Lessee for disturbance of quiet enjoyment of the Senior Center, or loss of occupation thereof, unless done so in an unreasonable, willful, or negligent manner.


34. **Modifications.** No modification of this Lease shall be binding on the County or the Lessee unless reduced to writing and signed by a duly authorized representative of County and the Lessee.
35. **Notice.** Notice under this Lease shall be given to the County at Brevard County Parks and Recreation: **Central Area Parks Operations, 840 Forrest Avenue, Cocoa, Florida 32922.** Notice shall be given to Lessee by mailing written notice, postage prepaid to the President of the **Martin Andersen Senior Center, Inc., 1025 South Florida Avenue, Rockledge, Florida 32955.** Notice shall be effective upon receipt or five (5) days from mailing, whichever even occurs first.
36. **Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any Lessee who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Lessee of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Lease by the County.
37. **Public Entity Crimes.** A person or affiliate who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
38. **Termination for Convenience.** Either party may terminate this Lease for their own convenience upon providing thirty (30) day written notice to the other party. In the event of a termination for convenience, the parties agree that the only termination damages payable by either party will be prorated rent up to the date of termination.
39. **Illegal, Unlawful, or Improper Use.** The Lessee shall make no unlawful, improper, immoral, or offensive use of the Leased Senior Center nor will the Lessee use the Leased Senior Center or allow the use of the Leased Senior Center for any purpose other than that hereinabove set forth. Failure of Lessee to comply with this provision shall be considered a material default under this Lease.
40. **Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Lease shall be subject to copyright by the Lessee in the United States or any other country.

41. **Music Performance.** The Lessee shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Lessee shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Lease. The Lessee agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.

42. **Entire Lease.** This Lease, together with any Exhibits, constitutes the entire Lease between the County and Lessee and supersedes all prior written or oral understandings. This Lease and any Exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto. As of the Effective Date of this Lease, all authority, permission, and right, express or implied, heretofore granted or inferred to be granted by the County to Lessee to operate a Senior Center shall be terminated, and Lessee shall cease operating any Senior Center other than as permitted by this Lease.

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

ATTEST:



Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



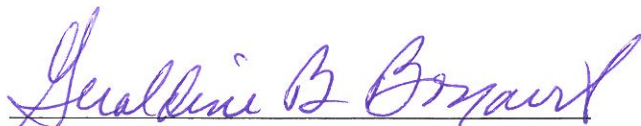
Robin Fisher, Chairman

As approved by the Board on 8/18/2015.

WITNESS:



MARTIN ANDERSEN SENIOR CENTER, INC.



Geraldine B. Bonavito, President

Reviewed for Legal Form and Content



Assistant County Attorney

RESOLUTION NO. 2015- 130

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.35, FLORIDA STATUTES AND SECTION 2-247 BREVARD COUNTY CODE OF ORDINANCES, AUTHORIZING THE LEASING OF REAL PROPERTY TO A NOT FOR PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the **MARTIN ANDERSEN SENIOR CENTER, INC.**, a 501(c)(3) tax exempt Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as "Lessee") has applied to the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") to lease a County owned facility which is a part of the County public park known as the **Martin Andersen Senior Center** (hereinafter referred to as the "Senior Center");

WHEREAS, the Lessee desires to operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County; and


WHEREAS, the County finds that the Lessee's proposed use of the Senior Center will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitutes a service that could be provided by the local government, and is compatible with the County purposes for which the Senior Center was constructed.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The Martin Andersen Senior Center is a County owned facility and was constructed for the purpose of being used as a public senior center.
2. The County has determined that the Martin Andersen Senior Center is not needed by the County.
3. The Lessee shall operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County.
4. The Lessee shall strive to develop a variety of diverse programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County.
5. The County shall enter into a lease with the Lessee beginning on the date of the last signature on the Lease Agreement for a term of five (5) years with the option to renew for an additional five (5) year term.
6. The consideration for the conveyance shall be \$250.00 per month.
7. This Resolution shall take effect immediately upon its adoption. No obligation to Lease the Senior Center to the Lessee shall arise until the Lease is executed by both parties.
8. In the event the Lessee fails to comply with the Lease, then the Senior Center shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

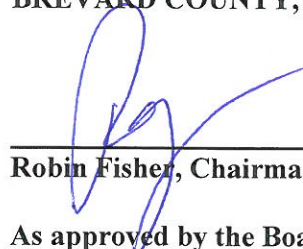
DONE, ORDERED AND ADOPTED this 18th day of August, 2015.

ATTEST:



Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**



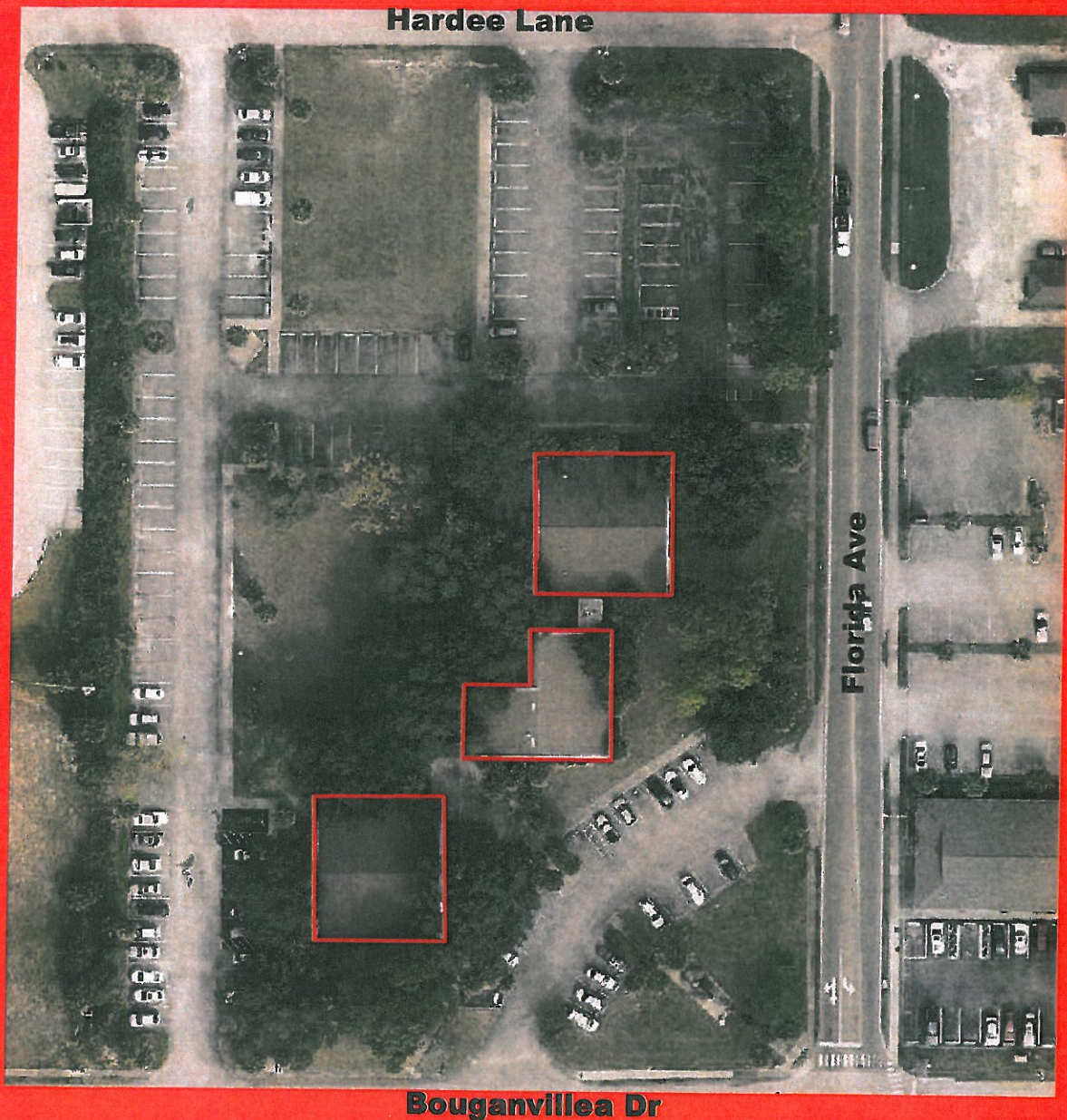
Robin Fisher, Chairman

As approved by the Board on 8/18/2015.

EXHIBIT "B"

Martin Andersen Senior Center

1025 Florida Avenue
Rockledge, FL 32955



Brevard County Parks and Recreation

2725 Judge Fran Jamieson Way
Viera, FL 32940

2015 Aerial

0 50 100
Feet

Page 12 of 15
DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.



Exhibit "C"

1. AED defibrillator

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Martin Andersen Senior Center, Inc.	
2. Fund/Account #:	3. Division Name: Parks and Recreation Department – South Area
4. Contract Description: Lease Agreement	
5. Contract Monitor: Denise Hayes	6. Mail Stop #: 76
7. Dept./Office Director: Jack Masson	8. Class Code:
ACTION DATE: Upon Receipt	ACTION REQUIREMENT: Approval Signature

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X		JM & HL	7/24/2015
Risk Management	✓		JLS	7/31/2015
County Attorney				

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.

BC-20: EXHIBIT I

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM




SECTION I

The following information must be completed on all new contracts submitted to the Board.

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7. Dept./Office Director: Jack Masson	8. Class Code:
ACTION DATE: Upon Receipt	ACTION REQUIREMENT: Approval Signature

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X		JM & HL	7/24/2015
Risk Management				
County Attorney				

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.

BC-20: EXHIBIT I

Resolution Number 2020-

A Resolution of the Board of County Commissioners of Brevard County, Florida, pursuant to Section 125.35, Florida Statutes and Section 2-247 of the Brevard County Code of Ordinances, authorizing the Renewal of a Lease of Real Property to a Not For Profit Corporation organized under the laws of the State of Florida; and Providing for an Effective Date.

Whereas, the **Martin Andersen Senior Center, Inc.**, a 501(c)(3) tax exempt Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as “Lessee”) previously applied to the **Board of County Commissioners of Brevard County, Florida**, a political subdivision of the State of Florida (hereinafter referred to as “County”) and entered into a Lease for a County owned facility which is a part of the County public park known as the **Martin Andersen Senior Center** (hereinafter referred to as the “Senior Center”); and

Whereas, under the Lease dated August 18, 2015, the Lessee operates and maintains the Senior Center for the benefit and enjoyment of the senior population of Brevard County; and

Whereas, the Lessee has requested to renew the Lease and the County is amenable to the Lessee’s request; and

Whereas, the County finds that the Lessee’s continued use of the Senior Center will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitutes a service that could be provided by the local government, and is compatible with the County purposes for which the Senior Center was constructed.

Now, Therefore, be it resolved by the Board of County Commissioners of Brevard County, Florida, that:

1. The Martin Andersen Senior Center is a County owned facility and was constructed for the purpose of being used as a public senior center.
2. The County has determined that the Martin Andersen Senior Center is not needed by the County.
3. The Lessee shall continue to operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County.
4. The Lessee shall strive to develop a variety of diverse programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County.
5. The County entered into a Lease with the Lessee on August 18, 2015 and the parties now desire to renew the Lease for a term of five years.
6. The consideration for the Lease shall be Two Hundred Fifty Dollars per month.

7. This Resolution shall take effect immediately upon its adoption.
8. In the event that the Lessee fails to comply with the Lease and the Lease Renewal, then the Senior Center shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

Attest:

**Board of County Commissioners
of Brevard County, Florida**

By: _____
Scott Ellis, Clerk of Court

By: _____
Bryan Andrew Lober, Chair

As approved by the Board on July 21, 2020.

Public Notice
Brevard County Board of County Commissioners

As provided in Brevard County Code Section 2-249, notice is hereby given that the Board of County Commissioners will hold a public meeting at 9:00 a.m. on July 21, 2020 at the Brevard County Government Center Board Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida. At the meeting the Board will consider Resolution and Renewal of Lease with the Martin Andersen Senior Center, Inc. for the leasing of the Martin Andersen Senior Center. Any person objecting to the Renewal of the Lease may submit written objections to the county manager's office or may appear and speak in objection at the meeting. Additional information may be obtained by contacting Mary Ellen Donner, Parks and Recreation Department Director at (321) 633-2046.

If a person desires to appeal any decision made by this Board with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her own expense, which record includes testimony and evidence on which any such appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, F.S., persons needing accommodations or an interpreter to participate in the meeting should notice County Administration no later than forty-eight hours prior to the public meeting at 321-633-2012.

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT REVIEW AND APPROVAL FORM


SECTION I - GENERAL INFORMATION

1. Contractor: Martin Andersen Senior Center, Inc.	
2. Fund/Account #:	3. Department Name: Parks & Recreation
4. Contract Description: Lease Renewal for the Martin Andersen Senior Center	
5. Contract Monitor: Melissa Renninger	7. Contract Type:
6. Dept/Office Director: Mary Ellen Donner	LEASE/RENTALS

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Renninger, Melissa <small>Digitally signed by Renninger, Melissa Date: 2020.06.25 15:52:17 -0400</small>	06/25/2020
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		6/29/2020

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor:	
2. Fund/Account #:	3. Department Name:
4. Contract Description:	
5. Contract Monitor:	7. Contract Type:
6. Dept/Office Director:	

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____



SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Data (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	

Renewal of Lease

This Renewal of Lease is made by and between the Brevard County Board of County Commissioners, a political subdivision of the State of Florida, (hereinafter referred to as “County”) and the Wickham Park Senior Center Association, Incorporated, a Not for Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as “Lessee”)

Witnesseth:

Whereas, the parties hereto previously entered into a Lease on August 18, 2015 (hereinafter referred to as “Lease” and attached as Exhibit “A”), more specifically identified as Contract Number 3571, for real property located in Brevard County, Florida, commonly known as the Wickham Park Senior Center, hereinafter referred to as “Senior Center”, located at 2785 Leisure Way, Melbourne, Florida 32935; and

Whereas, the Lease was for a term of five years; and

Whereas, the Lessee leases the Senior Center for a sum of Two Hundred Fifty Dollars paid monthly; and

Whereas, the parties desire to renew the Lease for an additional term of five years.

Now, Therefore, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

1. The above recitals are true and correct and are incorporated into this Renewal of Lease.
2. Pursuant to Section 3. of the Lease, the term of the Lease shall be renewed for an additional five-year term beginning on August 18, 2020 through August 17, 2025.
3. All terms and conditions of said Lease not inconsistent with the provisions of this Renewal of Lease, shall remain in full force and effect.

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

Attest:

Board of County Commissioners of
Brevard County, Florida

Scott Ellis, Clerk of Court

By: _____
Bryan Andrew Lober, Chair

As Approved by the Board on 7/21/2020.

Reviewed for Legal Form and Content

Abigail Forrester Jorandby 6/29/2020
Abigail Forrester Jorandby

Wickham Park Senior Center Association,
Incorporated

By: Diane L. Weinzierl 7/8/2020
Diane Weinzierl, President Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 8th day of July, 2020 by Diane Weinzierl, President of Wickham Park Senior Center Association, Incorporated. She is personally known to me or has produced Florida Driver's License as identification.

Vanessa Bethauser
Notary Public

Vanessa Bethauser
Typed/Printed Name

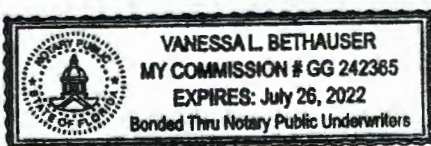


Exhibit "A"
LEASE

THIS LEASE, made and entered into this 18 day of August, 2015, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and the **WICKHAM PARK SENIOR CENTER ASSOCIATION, INC.**, a Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as the "Lessee").

WHEREAS, the Lessee desires to lease a County owned facility which is a part of the County public park known as **Wickham Park Senior Center** and is for the purpose of serving as a senior center (hereinafter referred to as the "Senior Center");

WHEREAS, the Lessee has an interest in providing programs and services to the senior population of the County, is well situated to do so, and has previously contracted with the County to provide such services;

WHEREAS, the County has an interest in allowing programs and services to be provided to the senior population of the County;

WHEREAS, the County has by Resolution, a copy of which is attached hereto as **Exhibit "A"**, determined that these programs and services provided will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitute a service that could be provided by local government, and are compatible with the County purposes for which the Senior Center was constructed.

W I T N E S S E T H:

NOW THEREFORE, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

1. **Leased Property.** The County hereby leases to the Lessee and Lessee hereby leases from the County, the Senior Center as presently constituted, commonly known as the **Wickham Park Senior Center, 2785 Leisure Way, Melbourne, Florida 32935** and described in **Exhibit "B"**. The Senior Center includes all improvements to the leased real property, whether constructed before or after the date of the Lease, and all fixtures, furniture, equipment and supplies, if any, placed on the leased property by the County.
2. **Representation by Lessee.** The Lessee represents that it is a Florida Not For Profit organization under the laws of Florida as described in Section 501(c)(3) of the Internal Revenue Code as amended, and is exempt from federal income tax pursuant to Section 501(a) of said Code.
3. **Term.** This Lease shall be effective from the date of the last signature for a period of five (5) years. It is hereby mutually agreed and understood that the Lessee may request renewal of this Lease for an additional five (5) year term by written notice from Lessee at least 60 days prior to the expiration date of this Lease.

4. **Rent.** The rent for the Senior Center shall be Two Hundred Fifty Dollars (\$250.00) per month, due the 5th day of each month and payable in advance by the Lessee. It is hereby mutually agreed and understood that the rent may be negotiated annually.
5. **Utilities.** The Lessee shall pay costs of all public utility charges which shall include telephone, electric, gas, water, sanitary sewer, and garbage, as applicable which is provided to the Senior Center by the County, City or any other public agency or public utility.
6. **General Liability Insurance.** Lessee agrees to provide and maintain at all times during the term of this Lease, without cost or expense to the County, policies of insurance generally known as general liability policies insuring the Lessee against any and all claims, demands and causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management or control of the Senior Center and any improvements thereon. The County shall be added on to the policy as an additional insured. The General Liability Insurance shall be issued by responsible insurance companies and in a form acceptable to the County, protecting and insuring against all the foregoing with combined single limits of not less than One Million dollars (\$1,000,000) for Bodily Injury and Property Damage and Fire Legal Liability in the amount of One Hundred Thousand dollars (\$100,000). All personal property housed or placed at the leased Senior Center shall be at the risk of the Lessee, whether owned by the County or the Lessee, and the County shall not be liable for any loss or damage to the personal property of the Lessee or others located thereon for any cause whatsoever. The Lessee agrees and understands that the County does not and shall not carry liability, theft or fire insurance on said property to cover the Lessee's interest therein.
7. **Insurance Certificates.** Lessee shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said certificates shall provide that the County is an additional insured, and that County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
8. **Indemnification.** The Lessee shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with the use, occupation, management or control of the Senior Center or any improvements or any furniture, furnishings, equipment and fixtures utilized in connection with the Senior Center by the Lessee unless such claims, damages, expenses, or losses are caused solely by acts of the County, its employees, or other persons not a party to this Lease acting on the County's request. Lessee agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with the Lessee's use, occupation, management or control of said Senior Center and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding. Likewise, the County shall indemnify and defend the Lessee and its employees, officers, and agents from all claims, damages, losses, and expenses,

including attorneys fees, caused solely by the County's use, occupation, or management of the Senior Center or any improvements made by the County unless such claims, damages, or losses are caused by the acts of the Lessee, its employees, officers, members or other persons not a party to this Lease acting on/at the Lessee's request. The County agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the Lessee as the sole result of the County's use, occupation or management of said Senior Center and that it will satisfy, pay and discharge any and all judgments that may be entered against the Lessee in such action or proceeding. However, nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9. **Obligations of the Lessee.** The Lessee shall keep the interior of the building clean and orderly in accordance with any applicable laws, regulations or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions of the Senior Center. Lessee shall maintain said property in its present condition, ordinary wear and tear excepted. All improvements and any changes made by Lessee to the interior of building shall be at the cost of the Lessee and subject to prior written approval by the County.

The Lessee, at its cost, shall be responsible for all interior and exterior signage it desires and signs which the Lessee desires in order to advertise its programs, excluding parking signs. However, all signage must comply with Americans with Disabilities regulations and must be preapproved by the County. Such signs must be in compliance with any applicable jurisdiction's code or ordinance.

The Lessee shall have control and responsibility for County owned (presently or subsequently installed) equipment and other depreciable property at the Senior Center as described in **Exhibit "C"**. Such property shall be considered a part and portion of the County's property covered in this Lease. None of the County owned property or equipment, if any is present, is to be sold, loaned, rented, used or moved outside of the Senior Center without the written approval of the Parks and Recreation Department Director or designee.

The Lessee shall promptly notify the County of the necessity of any and all maintenance and repairs needed to the exterior and/or the utility systems for the Senior Center.

All inspections, maintenance, repair monitoring and costs associated with the security systems shall be the responsibility of the Lessee. The Lessee shall pay the expense of fire alarm monitoring. Lessee understands that the Senior Center must be operated in such a fashion to comply with all federal, state and local all codes in order to operate the Senior Center or otherwise carry out the programs and activities authorized by the Lessee in compliance with this lease.

The Lessee agrees to cooperate with the County in all matters pertaining and relating to the operation of the Senior Center. This shall include providing space for public meetings, health and wellness services, and any other County sponsored programs, services, events and meetings, under the condition that the scheduling of such events would not interfere with previously scheduled Lessee events.

10. Obligations of the County. The County shall maintain the building's exterior in good condition. Maintenance and repair of the exterior structure includes rodent and termite control, exterior painting and sealing. The County shall be responsible for the cost and provision of ground maintenance around the exterior of the structure, which will include irrigation system maintenance for the lawn. The County shall mow, edge, and fertilize the lawns; weed and mulch landscapes; trim hedges, shrubs, and small trees; remove dead, damaged or unwanted trees; and water the lawns, landscapes and gardens. The County shall be responsible for costs of the water retention area maintenance for the leased Senior Center so that areas meet requirements of federal, state, and local regulations.

The County shall be responsible for maintenance and repair of the sidewalks and parking lot, including parking signs, parking lot light poles including light bulbs, outside seating, and flagpole.

All inspections, maintenance and repair of the fire alarm and fire sprinkler systems, and fire extinguishers, shall be the responsibility of the County.

The County shall be responsible for any needed repair and/or replacement of the HVAC system and plumbing system.

The County shall be responsible for the provision of maintenance, repair, and bear the costs of such, for the electrical distribution system from the load side of the meter can to all outlets. The County shall be responsible for replacement of exterior light bulbs and all ballasts.

11. Violation of Provisions. Any violation of these provisions will constitute a breach of the conditions of this Lease and may result in the cancellation of same. The County shall notify the Lessee of any violation of the provisions of this Lease in writing. Such notice shall identify the provision which is being violated and how it is being violated. The Lessee shall then have sixty (60) days within which to fix the violation. It is the intent of this provision for the parties to work together cooperatively towards a positive resolution of all issues. However, if the violation is not fixed or addressed in a reasonable fashion to the County's reasonable satisfaction, the County has the right to issue a notice of termination/cancellation effective immediately at the end of the sixty day period. In the event of cancellation or termination of this Lease, Lessee shall remove its personal property from the Senior Center. Any personal property not removed within ninety (90) days from the effective date of termination of the Lease shall be subject to becoming the property of the County.

12. Permitted Activities of the Lessee at the Senior Center. The Senior Center shall be operated to provide well rounded programs and services to the senior population of Brevard County so that one activity does not dominate the availability of use of the Senior Center. The Lessee shall provide a calendar of events on a quarterly basis subject to approval by the County. The Lessee shall strive to develop a variety of diverse programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County. The Board of Directors of the Lessee shall not have sole authority to deny such programs and services as stated above to the senior population of the

county with regard to race, color, religious creed, national origin, ancestry, age, gender, marital status, or disability.

The ongoing operation of the Senior Center will be the responsibility of the Board of Directors of the Lessee in coordination with the County. A representative from the County shall serve as a non-voting member on the Board of Directors. When requested, the Lessee shall provide a list to include names, addresses, and phone numbers of the Executive Committee of the Board of Directors of the Lessee, and additionally shall provide notification of any changes to said officers that may occur in the course of the year.

Revenues may be derived by the Lessee from memberships, fund-raising events, donations, special activities, shared revenues obtained from admission to activities sponsored and operated by other senior organizations, some participation from community-based organizations and for occasional use by other age groups. The County shall have the option to rent out the Senior Center during non-dedicated/usage time. The County shall supply notice fourteen (14) days in advance of said usage and direct costs shall apply.

13. **Reverter and Right of Re-Entry and Repossession.** In the event the Senior Center is not used or ceases to be used for the public purposes set forth herein, the Lease shall immediately cease and the Senior Center shall revert to the County which shall thereafter have the right to re-enter and repossess the Senior Center.
14. **ADA Compliance.** The County and Lessee shall conform to current requirements of the Americans with Disabilities Act in the performance of this Lease, and shall not cause or place on the Senior Center any condition causing the Senior Center to become non-compliant. The parties shall work together to cure any known violations of the ADA that may occur.
15. **Hours of Operation.** For normal operations, the Lessee assures that the Senior Center will be open an average of 35 daytime hours per week with the exception of those weeks which include a holiday or in the event of an emergency. During all hours of operation of the Senior Center by the Lessee or during all hours when the Senior Center is utilized for programs or services sanctioned by the Lessee, the Lessee shall be responsible for any and all damage to the Senior Center, ordinary wear and tear excepted. The Lessee shall provide either paid staff or designate members of its organization to supervise use of the Senior Center and to secure the Senior Center following use by the Lessee, or any other groups sanctioned by the Lessee.
16. **Emergency Services.** In the case of a general emergency as declared by the County, the County retains the right to immediately resume occupation, management, and maintenance of the Senior Center, to use the facility to meet any emergency needs for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County. The Lessee will be provided as much notice as is practicable dependent on how suddenly the need arises and predictability of how long the need will continue. The County shall not be responsible for the damage, loss of property or income created by the use of the Senior Center by agencies which support the emergency response and recovery such as Red Cross, Federal Emergency Management Agency and others. The County and Lessee shall work directly with such support agencies to recover the cost

of restoration, lost equipment, and supplies used. During the period in which the County or other governmental or non-governmental agency occupies or manages the Senior Center, Lessee occupancy and any duties or obligations hereunder will be suspended. Any maintenance, damage, restoration, or repair necessitated during any suspension of the Lessee's occupancy under this Lease will be the responsibility and the expense of the County occupancy under this Lease will be the responsibility and the expense of the County. Repairs, rehabilitation, restoration or maintenance, the need for which arises as a result of such emergency suspension of the Lessee's occupancy, shall all be diligently completed by the County, at the expense of the County prior to the Lessee reoccupying the Senior Center. As used herein, an "emergency" will be defined as a period of civil unrest or riot, a period during which the military needs the Senior Center for a period of time relating directly to defense of the nation and a likely attack of the nation, a period during which weather such as a hurricane or tornado is likely to cause damage to the community and the Senior Center, is needed for public shelter, distribution of emergency supplies such as food or water, or other related event, or any other circumstance designated by the Emergency Operations Center, "E.O.C." as an emergency.

17. Lessee's Assignment, Sublease or License for Occupation by Other Persons. Lessee agrees not to assign or sublease the Senior Center, any part thereof, or any right or privilege connected therewith, without first obtaining the County's written consent, which consent the County may withhold in its sole discretion. Consent on one occasion by the County shall not be consent to a subsequent assignment, sublease, or occupation by other persons. Lessee's unauthorized assignment, sublease or license to occupy shall be void, and shall terminate the Lease at the County's option. Lessee's interest in this Lease is not assignable by operation of law, nor is any assignment of its interest herein, without the County's written consent. Nothing herein is intended to prevent the Lessee from entering into short-term use/rental lease with third parties for up to and including three (3) days (no overnight activities); however, even under such circumstances the Lessee shall remain responsible for each and every of its obligations under this Lease. The Lessee shall be responsible for ensuring that all short term use or rental leases shall only be allowed for activities that are consistent with the remainder of the terms of this Lease.

18. Alterations, Changes and Additions. No structural changes, alterations or additions shall be made by the Lessee to the Senior Center without the prior written consent of the County. Any such alterations, changes and additions shall remain for the benefit of and become the property of the County.

19. No Use that Increases Insurance Risk. The Lessee shall not use the Senior Center in any manner, even in its use for the purposes for which the Senior Center is leased, that will increase the risk covered by insurance on the building where the Senior Center is located, so as to increase the rate of insurance on the Senior Center, or to cause cancellation to any insurance policy covering the building. Lessee further agrees not to keep at the Senior Center, or permit to be kept, used, or sold thereon, anything prohibited by the policy of fire insurance covering the Senior Center. Lessee shall comply, at its own expense, with all requirements of insurers necessary to keep in force the fire and public liability insurance covering the Senior Center.

20. **Licenses, Permits, and Taxes.** Lessee agrees to secure and maintain all licenses and permits required to operate, including any applicable sales or use tax, which shall be imposed or assessed by any and all governmental authorities, in connection with the business or operation conducted under this Lease, and to meet all federal, state, county and municipal laws, ordinances, policies and rules. Any such licenses and permits shall be maintained and posted, if required, at appropriate places at the Senior Center within thirty (30) days of the execution of this lease by both parties. If applicable, a Bingo Class "A" License shall be obtained on an annual basis and a copy shall be provided to the County.
21. **No Waiver of Covenants or Conditions.** The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally.
22. **Successors in Interest.** This Lease and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.
23. **Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
24. **Venue.** Venue for any legal action brought by any party to this Lease to interpret, construe or enforce this Lease shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
25. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
26. **Governing Law.** This Lease shall be deemed to have been executed and entered into within the State of Florida and this Lease, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
27. **Compliance with Statutes.** It shall be the Lessee's and the County's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.
28. **Independent Contractor.** Lessee shall perform the services under this Lease as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Lease shall be interpreted or construed to constitute the Lessee or any of its agents or employees to be the agent, employee or representative of the County.
29. **Right to Audit Records.** The Lessee shall prepare an annual financial statement and shall submit same to the Area Manager. In the performance of this Lease, the Lessee shall keep books, records, and accounts of all activities related to this Lease, in compliance with general accounting procedures. Books, records and accounts

related to the performance of this Lease shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the agency for a period of three (3) years after the termination of this Lease. All records or documents created by Lessee or provided to Lessee by the County in connection with the activities or services provided by County under the terms of this Lease, are public records and the Lessee agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.

- 30. Construction of Lease.** The parties hereby acknowledge that they have fully reviewed this Lease and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Lease shall not be construed against any party as if they were the drafter of this Lease.
- 31. Surrender of Premises.** Lessee shall surrender the Senior Center to the County at the end of the Lease term in generally the same condition as when Lessee took possession, allowing for changes and modifications agreed to by the parties over time, reasonable wear and tear, damages by acts of God, including fire and storm. The Lessee shall remove all business signs or symbols placed on the Senior Center by the Lessee before surrendering the Senior Center and restore the portion of the Senior Center on which they were placed in the same condition as before placement. Lessee shall have ninety (90) days notice to surrender.
- 32. Partial Destruction of Premises.** Partial destruction of the Senior Center shall not render this Lease void, or terminate it except as herein provided. If the Senior Center is partially destroyed during the term of this Lease, County may endeavor to make repairs, providing the County has the fiscal means to do so, and when such repairs can be made in conformity with local, state, and federal laws and regulations, within ninety (90) days of the partial destruction. If the repairs cannot be so made in ninety (90) days and the County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Lease. If the leased Senior Center is more than one-third destroyed, County or Lessee may at its option terminate this Lease, giving ninety (90) day notice to Lessee.
- 33. County's Entry for Inspection and Maintenance.** The County reserves the right to enter the -Senior Center at reasonable times to inspect, to perform required maintenance and repair, or to make additions or alteration to any part of the building in which the Senior Center under Lease is located, and Lessee agrees to permit the County to do so. The County may, in connection with such alterations, additions, or repairs, erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment without incurring liability to Lessee for disturbance of quiet enjoyment of the Senior Center, or loss of occupation thereof, unless done so in an unreasonable, willful, or negligent manner.
- 34. Modifications.** No modification of this Lease shall be binding on the County or the Lessee unless reduced to writing and signed by a duly authorized representative of County and the Lessee.
- 35. Notice.** Notice under this Lease shall be given to the County at Brevard County Parks and Recreation: **South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32935.** Notice shall be given to

Lessee by mailing written notice, postage prepaid to the President of the **Wickham Park Senior Center Association, Inc., 2785 Leisure Way, Melbourne, Florida 32935**. Notice shall be effective upon receipt or five (5) days from mailing, whichever even occurs first.

- 36. Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any Lessee who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Lessee of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Lease by the County.
- 37. Public Entity Crimes.** A person or affiliate who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 38. Termination for Convenience.** Either party may terminate this Lease for their own convenience upon providing thirty (30) day written notice to the other party. In the event of a termination for convenience, the parties agree that the only termination damages payable by either party will be prorated rent up to the date of termination.
- 39. Illegal, Unlawful, or Improper Use.** The Lessee shall make no unlawful, improper, immoral, or offensive use of the Leased Senior Center nor will the Lessee use the Leased Senior Center or allow the use of the Leased Senior Center for any purpose other than that hereinabove set forth. Failure of Lessee to comply with this provision shall be considered a material default under this Lease.
- 40. Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Lease shall be subject to copyright by the Lessee in the United States or any other country.
- 41. Music Performance.** The Lessee shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Lessee shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Lease. The Lessee agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.

~~indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.~~ MR

42. Entire Lease. This Lease, together with any Exhibits, constitutes the entire Lease between the County and Lessee and supersedes all prior written or oral understandings. This Lease and any Exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto. As of the Effective Date of this Lease, all authority, permission, and right, express or implied, heretofore granted or inferred to be granted by the County to Lessee to operate a Senior Center shall be terminated, and Lessee shall cease operating any Senior Center other than as permitted by this Lease.

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

ATTEST:



Scott Ellis, Clerk of Court

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**




Robin Fisher, Chairman

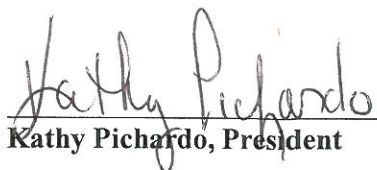
As approved by the Board on 8/18/2015.

WITNESS:

**WICKHAM PARK SENIOR CENTER
ASSOCIATION, INC.**

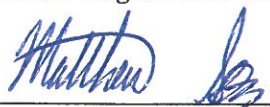


James Y. Rutta



Kathy Pichardo, President

Reviewed for Legal Form and Content



Assistant County Attorney

RESOLUTION NO. 2015-129

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.35, FLORIDA STATUTES AND SECTION 2-247 BREVARD COUNTY CODE OF ORDINANCES, AUTHORIZING THE LEASING OF REAL PROPERTY TO A NOT FOR PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the **WICKHAM PARK SENIOR CENTER ASSOCIATION, INC.**, a 501(c)(3) tax exempt Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as "Lessee") has applied to the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") to lease a County owned facility which is a part of the County public park known as the **Wickham Park Senior Center** (hereinafter referred to as the "Senior Center");

WHEREAS, the Lessee desires to operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County; and

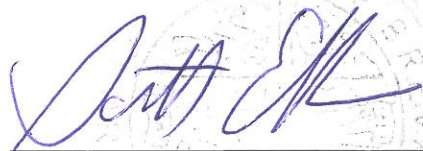
WHEREAS, the County finds that the Lessee's proposed use of the Senior Center will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitutes a service that could be provided by the local government, and is compatible with the County purposes for which the Senior Center was constructed.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The Wickham Park Senior Center is a County owned facility and was constructed for the purpose of being used as a public senior center.
2. The County has determined that the Wickham Park Senior Center is not needed by the County.
3. The Lessee shall operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County.
4. The Lessee shall strive to develop a variety of diverse programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County.
5. The County shall enter into a lease with the Lessee beginning on the date of the last signature on the Lease Agreement for a term of five (5) years with the option to renew for an additional five (5) year term.
6. The consideration for the conveyance shall be \$250.00 per month.
7. This Resolution shall take effect immediately upon its adoption. No obligation to Lease the Senior Center to the Lessee shall arise until the Lease is executed by both parties.
8. In the event the Lessee fails to comply with the Lease, then the Senior Center shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

DONE, ORDERED AND ADOPTED this 18th day of August, 2015.

ATTEST:


 Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

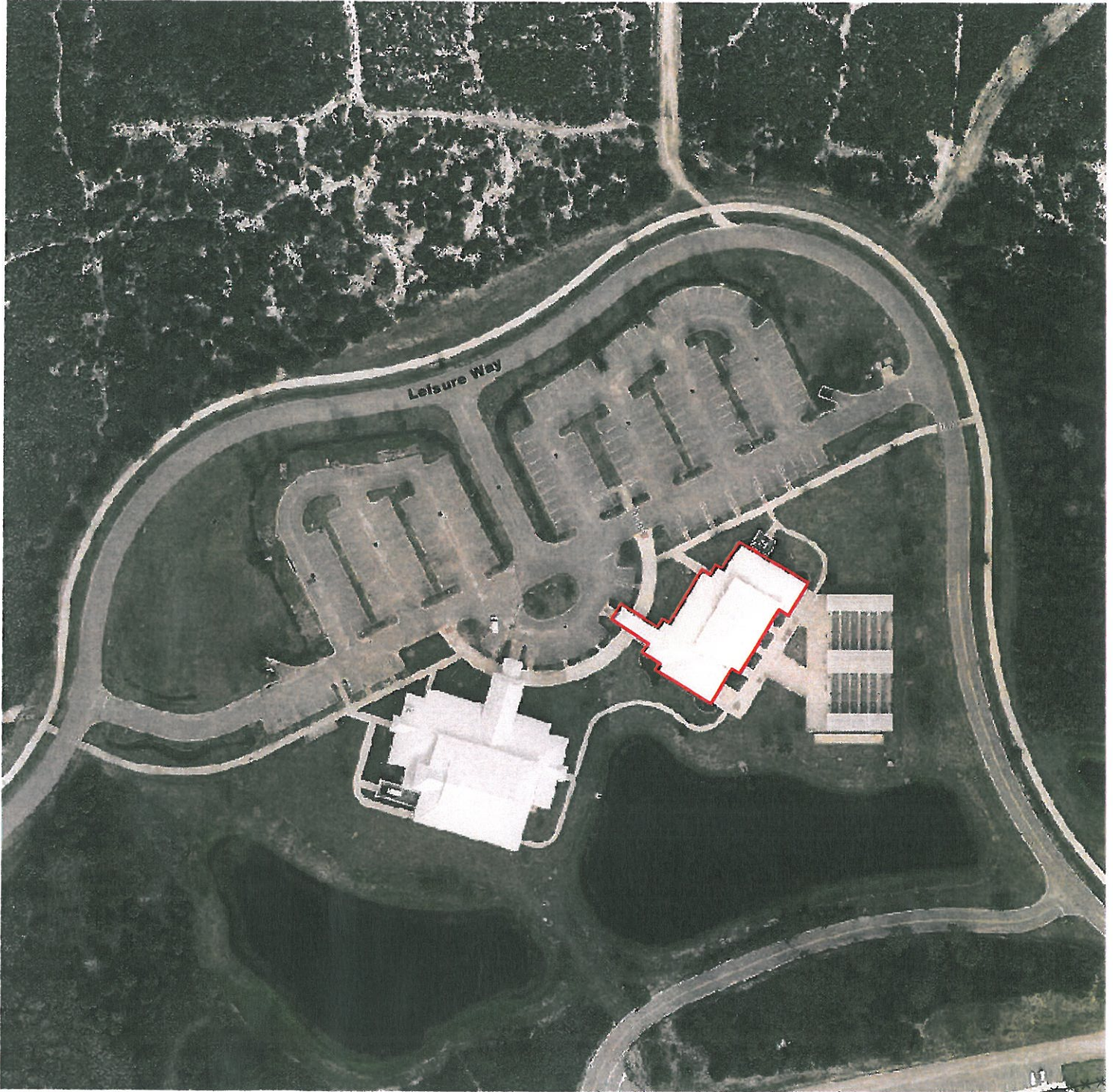

 Robin Fisher, Chairman

As approved by the Board on 8/18/2015.

EXHIBIT "B"

Wickham Park Senior Center

2785 Leisure Way
Melbourne, FL 32935



2015 Aerial

Brevard County Parks and Recreation

100 50 0 100 Feet

2725 Judge Fran Jamieson Way
Viera, FL 32940



DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.

Page 12 of 13
Exhibit "A" to Lease Renewal

Exhibit "C"

1. AED located in the Main Hallway
2. Ice Machine located in the Kitchen
3. Portable Stage located in the Storage Closet
4. Sound System located in the Multi-Purpose Room

RECEIVED
JAN 10 2014
JAN 10 2014

Resolution Number 2020-

A Resolution of the Board of County Commissioners of Brevard County, Florida, pursuant to Section 125.35, Florida Statutes and Section 2-247 of the Brevard County Code of Ordinances, authorizing the Renewal of a Lease of Real Property to a Not For Profit Corporation organized under the laws of the State of Florida; and Providing for an Effective Date.

Whereas, the **Wickham Park Senior Center Association, Incorporated**, a 501(c)(3) tax exempt Not For Profit Corporation organized under the laws of the State of Florida (hereinafter referred to as "Lessee") previously applied to the **Board of County Commissioners of Brevard County, Florida**, a political subdivision of the State of Florida (hereinafter referred to as "County") and entered into a Lease for a County owned facility which is a part of the County public park known as the **Wickham Park Senior Center** (hereinafter referred to as the "Senior Center"); and

Whereas, under the Lease dated August 18, 2015, the Lessee operates and maintains the Senior Center for the benefit and enjoyment of the senior population of Brevard County; and

Whereas, the Lessee has requested to renew the Lease and the County is amenable to the Lessee's request; and

Whereas, the County finds that the Lessee's continued use of the Senior Center will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitutes a service that could be provided by the local government, and is compatible with the County purposes for which the Senior Center was constructed.

Now, Therefore, be it resolved by the Board of County Commissioners of Brevard County, Florida, that:

1. The Wickham Park Senior Center is a County owned facility and was constructed for the purpose of being used as a public senior center.
2. The County has determined that the Wickham Park Senior Center is not needed by the County.
3. The Lessee shall continue to operate and maintain the Senior Center for the benefit and enjoyment of the senior population of Brevard County.
4. The Lessee shall strive to develop a variety of diverse programs and services that meet the recreational, physical, financial, health, social, nutritional, and educational needs of all socioeconomic levels of the senior population of the County.
5. The County entered into a Lease with the Lessee on August 18, 2015 and the parties now desire to renew the Lease for a term of five years.
6. The consideration for the Lease shall be Two Hundred Fifty Dollars per month.

7. This Resolution shall take effect immediately upon its adoption.
8. In the event that the Lessee fails to comply with the terms of the Lease and the Lease Renewal, then the Senior Center shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

Attest:

**Board of County Commissioners
of Brevard County, Florida**

By: _____
Scott Ellis, Clerk of Court

By: _____
Bryan Andrew Lober, Chair

As approved by the Board on July 21, 2020.

Public Notice
Brevard County Board of County Commissioners

As provided in Brevard County Code Section 2-249, notice is hereby given that the Board of County Commissioners will hold a public meeting at 9:00 a.m. on July 21, 2020 at the Brevard County Government Center Board Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida. At the meeting the Board will consider Resolution and Renewal of Lease with the Wickham Park Senior Center Association, Incorporated for the leasing of the Wickham Park Senior Center. Any person objecting to the Renewal of the Lease may submit written objections to the county manager's office or may appear and speak in objection at the meeting. Additional information may be obtained by contacting Mary Ellen Donner, Parks and Recreation Department Director at (321) 633-2046.

If a person desires to appeal any decision made by this Board with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her own expense, which record includes testimony and evidence on which any such appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, F.S., persons needing accommodations or an interpreter to participate in the meeting should notice County Administration no later than forty-eight hours prior to the public meeting at 321-633-2012.

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT REVIEW AND APPROVAL FORM


SECTION I - GENERAL INFORMATION

1. Contractor: Wickham Park Senior Center Association, Incorporated	
2. Fund/Account #:	3. Department Name: Parks & Recreation
4. Contract Description: Lease Renewal for the Wickham Park Senior Center	
5. Contract Monitor: Melissa Renninger	7. Contract Type:
6. Dept/Office Director: Mary Ellen Donner	LEASE/RENTALS

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Renninger, Melissa <small>Digitally signed by Renninger, Melissa Date: 2020.06.25 15:53:17 -0400</small>	06/25/2020
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		6/29/2020

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete <input checked="" type="checkbox"/>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor:	
2. Fund/Account #:	3. Department Name:
4. Contract Description:	
5. Contract Monitor:	7. Contract Type:
6. Dept/Office Director:	

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____



SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
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Contract Absolute End Data (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.11

7/21/2020

Subject:

Approval, Re: Agreement with Feeding Florida, Fresh Access Bucks Program at the Brevard County Farmers Market held at Wickham Park.

Fiscal Impact:

There is no fiscal impact to the Board as this is a reimbursement to patrons.

Dept/Office:

UF/Extension Services

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Request Fresh Access Bucks Strategic Partnership Agreement with Feeding Florida, Inc. and authorize the County Manager to execute necessary Budget Change Requests.

Summary Explanation and Background:

The Brevard County Farmers Market has been accepting the Supplemental Nutrition Aid Program (SNAP) and working with the Fresh Access Bucks (FAB) team since 2013. By accepting SNAP and offering the FAB program which matches SNAP benefits dollar for dollar, up to \$40 per week, UF/Extension Services are able to offer local, nutritious foods to an audience that often perceives Farmers Markets as being too expensive for them. This, in turn, supports our local farmers and producers and the local economy overall. In the last two years, the Brevard County Farmers Market has generated nearly \$14,000 in SNAP sales for our farmers and producers, and nearly \$12,000 of FAB "Free" purchases. This represents income to our farmers and producers, and provides fresh, local produce to SNAP recipients at no cost to them.

This is a request to continue the grant, previously approved at the February 26, 2019 BOCC meeting, and authorize the County Manager to approve all necessary budget changes Clerk to the Board Instructions:

Clerk to the Board Instructions:

A total of three signed and executed original agreements needed; one (1) for Clerk to the Board, one (1) for Feeding Florida, and one (1) for UF/Extension Services Department.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Feeding Florida		2. Amount:	
3. Fund/Account #: 0001 200810		4. Department Name: UF/Extension Services	
5. Contract Description: Fresh Access Bucks Partnership Agreement Renewal			
6. Contract Monitor: Lisa Wishe		8. Contract Type:	
7. Dept/Office Director: Elizabeth Shepard		GRANT	
9. Type of Procurement: Other			

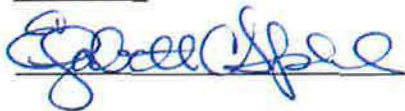

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



June 1, 2020

Gayle Orren Whitworth
Brevard County Board of County Commissioners
Brevard County Farmers Market
3695 Lake Drive
Cocoa, FL 32926

Dear Ms. Whitworth,

Feeding Florida, Inc. (FF), a 501(c)(3) nonprofit organization, is pleased to announce a formal approval of your Request for Strategic Partnership in Fresh Access Bucks (FAB). As a FAB Program Partner, your Outlet will join a network of other farmers markets, mobile markets, farm stands, CSAs, and retail settings throughout Florida that work together to help make fresh, locally grown foods more affordable and available to those most in need.

Attached is the Strategic Partner Agreement, please execute this Agreement and return within 20 business days from the date of this letter. Please let us know if you have any questions or need additional assistance. We look forward to working with you.

Sincerely,

Mary Hathaway
FAB Program Manager
Feeding Florida
Mary@FeedingFlorida.org

Katie Delaney
FAB Program Manager
Feeding Florida
Katie@FeedingFlorida.org

Fresh Access Bucks Strategic Partnership Agreement

This contract between Feeding Florida, Inc. (FF) and Brevard County Board of County Commissioners, dba Brevard County Farmers Market ("Program Partner"), provides for grant funds toward the nutrition incentive program, Fresh Access Bucks, at the participating farm-to-retail venues ("Outlet") listed in Appendix A. These grant funds will be in effect through the duration of the calendar year: June 1, 2020 - May 31, 2021.

Program Partner is responsible for the following:

1. Program Partner will participate in all aspects of and comply with all actions required by FAB in accordance with program standards and the attached Feeding Florida guidelines.
2. FAB Partner Outlets are required to have a functioning EBT machine to process SNAP benefits. Partner Outlets must provide their FNS number (FNS number is assigned by USDA upon receiving machinery) to FAB for grant and reporting purposes.
3. FAB incentives must only be used by current SNAP recipients.
4. FAB incentives must only be used by an eligible recipient for the purchase of fresh fruits and vegetables produced locally by Florida growers or growers within 50 miles of the Florida border.
5. Program Partner will conduct a minimum of 6 distinct SNAP nutrition education events such as chef/cooking demonstrations or taste tests per Outlet, reflected in FM Tracks Post Market Reports and the FAB Annual Report between June 1, 2020 - May 31, 2021.

Record Keeping and Reporting: FF requires that the Program Partner either directly or through its Farmers Market management partners, provide to FF, Wholesome Wave and the USDA, a breakdown of SNAP and FAB benefits or incentives honored according to Feeding Florida guidelines and the USDA's guidelines referenced in the Feeding Florida guidelines.

Evaluation & Participation: FF requires that Program Partner staff complete a final Annual Report, a copy of which is attached for reference, due no later than 30 days following **June 1, 2021, or the date at which funds are expended and/or program goals have been completed.**

Program Partner Staff must attend the FAB Annual Training. A calendar of training dates will be available by March 31, 2021.

Program Partner agrees to participate in regular, monthly regional calls, statewide outreach campaigns and to make use of the FAB tent and banner at market and promotional events, distribute FAB flyers, postcards and other promotional materials provided by FF.

Payment: Program Partner will be supported by funds outlined below in the FAB Outlet Incentive Budget. Funds will be distributed on a weekly basis via direct deposit based on vendor reimbursement data reported in FM Tracks. Please note: Individual Transactions, Vendor Reimbursement, and Post Market Reports **must be completed in full** on a weekly basis, or otherwise, as agreed upon by FF and the Program Partner.

To receive payment Program Partner must provide the following:

- Completed W9;
- Updated Outlet FNS Number;
- Signed Contract and Guidelines with FF updated annually;
- Direct Deposit information on file with FF;
- Weekly Up-to-Date Data on FM Tracks: Completed Transactions, Vendor Reimbursements, and Post Market Reports;

Fresh Access Bucks Membership Program: The Program Partner agrees to participate in the Fresh Access Bucks Membership Program. Program membership fees are tiered based on FAB Incentives Redeemed between June 1, 2020 -May 31, 2021. Membership fees are due on September 30, 2021 via check to FF in order to remain a member in good standing. FF will hold the final payments due under this contract until all terms have been met. A copy of the Fresh Access Bucks Membership Program is attached for reference.

FAB Redeemed at market	Membership fee due
\$500 - \$1,499	\$50
\$1,500 - \$2,999	\$150
\$3,000 - \$4,999	\$300
\$5,000 - \$7,499	\$500
\$7,500 - \$9,999	\$750
\$10,000 and above	\$1,000

FF shall provide the Program Partner with a JPEG version of the FAB logo, as well as collaborators' logo(s), for inclusion in informational and promotional materials. The Program Partner agrees to post and distribute such material as applicable, and agrees to acknowledge its partnership with FF in any public statements or publicity relating to FAB. FF may ask Program Partner to submit for review any reports and other materials containing FF or FAB logos intended for release to the press prior to publication. FF will provide tokens relating to SNAP and FAB as needed.

FF agrees to co-develop a tailored sustainability plan with Program Partner and requests that the Program Partner seek additional local and regional funding in the growth of the Outlet(s). FF requests information and confirmation of additional leveraged funds in support of the Program Partner's innovative programs to widen access to locally grown fresh fruits and vegetables for federal and state nutrition benefit program clients and other low-income community members.

This agreement shall remain in effect through May 31, 2021. Feeding Florida reserves the right to cancel this agreement for non-performance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

By Scott Ellis, Clerk

Bryan Andrew Lober, Chair

Date: _____

As approved by the BOCC on: 7/21/2020

Reviewed as to form and legal sufficiency:



By: Assistant County Attorney

Accepted and Agreed by:

=====

Print Name, Title & Organization

Robin Safley

=====

**Robin Safley, Executive Director
Feeding Florida**

=====

Signature



=====

Signature

=====

Date

6/18/2020

=====

Date

Appendix A

Outlet: Farmers' Market, Mobile Market or CSA	City, State	FNS Number
Brevard County Board of County Commissioners, dba Brevard County Farmers Market	Melbourne, FL	387323

FINI Grant Calendar Years	FINI Grant Membership Fees Due Dates
Y1 - September 1, 2018 - May 31, 2019	Y1 - September 30, 2019
Y2 - June 1, 2019 - May 31, 2020	Y2 - September 30, 2020
Y3 - June 1, 2020 - May 31, 2021	Y3 - September 30, 2021

Feeding Florida FAB Staff Contact Information

Robin Safley

Executive Director

Robin@FeedingFlorida.org

Mary Hathaway

Fresh Access Bucks Manager -Central Florida

Contact

Mary@FeedingFlorida.org

Katie Delaney

Fresh Access Bucks Manager -North Florida Contact

Katie@FeedingFlorida.org

Heather Henderson

Fresh Access Bucks Coordinator -South Florida

Contact

Heather@FeedingFlorida.org

Meghan Fiveash

Fresh Access Bucks Communications Coordinator

Contact

Meghan@FeedingFlorida.org

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Feeding Florida		2. Amount:	
3. Fund/Account #: 0001 200810		4. Department Name: UF/Extension Services	
5. Contract Description: Fresh Access Bucks Partnership Agreement Renewal			
6. Contract Monitor: Lisa Wishe		8. Contract Type: GRANT	
7. Dept/Office Director: Elizabeth Shepard			
9. Type of Procurement: Other			



SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.12

7/21/2020

Subject:

FY2021 Proposed Budgets for Community Development Districts

Fiscal Impact:

There is no financial impact

Dept/Office:

Budget Office

Requested Action:

It is requested that the Board acknowledge receipt of the FY2021 Proposed Budget for the attached Community Development Districts.

Summary Explanation and Background:

In accordance with Florida Statute 190.008(2), at least 60 days prior to adoption, the district board shall submit to the local governing authorities having jurisdiction over the area included in the district, for purposes of disclosure and information only, the proposed annual budget for the ensuring fiscal year and any proposed long-term financial plan or program of the district for future operations. The following Community Development Districts are submitting their Fiscal Year 2021 Proposed Budget to the Brevard County Board of Commissioners:

- Baytree Community Development District
- Montecito Community Development District
- Viera East Community Development District
- Willow Creek Community Development District
- Viera Stewardship District

Clerk to the Board Instructions:

Maintain necessary documents for records retention.

Baytree
Community Development District

219 E. Livingston Street, Orlando, Florida 32801
Phone: 407-841-5524 – Fax: 407-839-1526

June 1, 2020

Brevard County Manager

Mr. Frank Abbate
2725 Judge Fran Jamieson Way, Bldg. C
Melbourne, Florida 32940

Re: Baytree Community Development District
Proposed Budget Fiscal Year 2021

Dear Mr. Abbate:

In accordance with chapter 190.008 (2)(b), Florida Statutes, enclosed please find one copy of the District's proposed budget for the Fiscal Year 2021 for purposes of disclosure and information only. The District will schedule a public hearing not less than 60 days from the date of this letter for adoption of the same. Should you have any questions regarding the enclosed, please feel free to contact me.

Sincerely,



Stacie Vanderbilt
Recording Secretary

Enclosures

RECEIVED

JUN 1 2 2020

BUDGET OFFICE

RECEIVED

JUN 11 2020

County Manager's
Office

Baytree

Community Development District



Proposed Budget

FY 2021

Presented by:



Table of Contents

General Fund	Page 1-2
Narrative	Page 3-9
Capital Projects Fund	Page 10-11
Pavement Management Fund	Page 12
Community Beautification Fund	Page 13
O&M Assessment Calculation	Page 14
IOB Roadway Maintenance Cost Share Schedule	Page 15
Exhibit A: Allocation of Operating Reserve	Page 16

Baytree
Community Development District
Proposed Budget FY 2021
General Fund

Description	Adopted Budget FY2020	Actual thru 03/31/20	Projected Next 6 Months	Total Projected 09/30/20	Proposed Budget FY 2021
-------------	-----------------------------	----------------------------	-------------------------------	--------------------------------	-------------------------------

Revenues

Maintenance Assessments	\$853,142	\$805,266	\$47,876	\$853,142	\$853,142
Interest Income	\$0	\$1	\$1	\$2	\$0
Miscellaneous Income (IOB Cost Share Agreement)	\$40,223	\$10,646	\$30,168	\$40,814	\$41,155
Miscellaneous Income	\$8,000	\$2,633	\$2,633	\$5,265	\$8,000
Total Revenues	\$901,365	\$818,545	\$80,678	\$899,223	\$902,297

Expenditures

Administrative

Supervisor Fees	\$8,000	\$2,600	\$5,400	\$8,000	\$8,000
FICA Expense	\$612	\$199	\$405	\$604	\$612
Engineering	\$25,000	\$32,353	\$25,000	\$57,353	\$35,000
Assessment Administration	\$7,500	\$7,500	\$0	\$7,500	\$7,500
Attorney Fees	\$17,750	\$11,093	\$14,000	\$25,093	\$17,750
Annual Audit	\$3,400	\$0	\$3,185	\$3,185	\$3,185
Management Fees	\$40,938	\$20,469	\$20,469	\$40,938	\$42,166
Information Technology	\$5,300	\$800	\$800	\$1,600	\$2,800
Telephone	\$150	\$0	\$0	\$0	\$150
Postage	\$1,500	\$493	\$493	\$987	\$1,500
Insurance	\$13,970	\$13,665	\$0	\$13,665	\$15,100
Tax Collector Fee	\$13,980	\$0	\$13,980	\$13,980	\$13,980
Printing & Binding	\$1,700	\$430	\$300	\$730	\$1,700
Legal Advertising	\$1,200	\$171	\$1,029	\$1,200	\$1,200
Other Current Charges	\$1,700	\$390	\$420	\$810	\$1,700
Office Supplies	\$200	\$73	\$100	\$173	\$200
Property Taxes	\$250	\$248	\$0	\$248	\$250
Property Appraiser	\$234	\$234	\$0	\$234	\$234
Dues, Licenses & Subscriptions	\$175	\$175	\$0	\$175	\$175
Administrative Expenses	\$143,559	\$90,892	\$85,582	\$176,474	\$153,202

Baytree
Community Development District
Proposed Budget FY 2021
General Fund

Description	Adopted Budget FY2020	Actual thru 03/31/20	Projected Next 6 Months	Total Projected 09/30/20	Proposed Budget FY 2021
<u>Operation and Maintenance</u>					
Security Contract	\$172,306	\$85,716	\$86,590	\$172,306	\$172,306
Security - Speed Control	\$5,000	\$0	\$2,500	\$2,500	\$2,000
Gate Maintenance Contract	\$1,200	\$1,100	\$0	\$1,100	\$1,200
Maintenance - Gatehouse	\$10,000	\$3,792	\$5,500	\$9,292	\$10,000
Telephone/Internet - Gatehouse/Pool	\$11,000	\$6,474	\$7,320	\$13,794	\$15,000
Transponders	\$4,500	\$5,030	\$0	\$5,030	\$5,000
Field Management Fees	\$27,849	\$13,925	\$13,925	\$27,849	\$28,684
Electric	\$55,000	\$24,478	\$27,600	\$52,078	\$55,000
Water & Sewer	\$10,460	\$5,264	\$4,200	\$9,464	\$11,500
Gas	\$7,800	\$4,839	\$2,961	\$7,800	\$7,800
Maintenance - Lakes	\$32,600	\$16,680	\$16,680	\$33,360	\$33,360
Maintenance - Landscape Contract	\$94,536	\$47,634	\$46,500	\$94,134	\$93,000
Maintenance - Additional Landscape	\$15,000	\$8,450	\$6,550	\$15,000	\$15,000
Maintenance - Pool	\$17,000	\$14,176	\$7,336	\$21,512	\$17,000
Maintenance - Irrigation	\$11,000	\$3,959	\$3,500	\$7,459	\$10,000
Maintenance - Lighting	\$15,000	\$760	\$7,500	\$8,260	\$9,000
Maintenance - Monuments	\$6,000	\$0	\$3,000	\$3,000	\$5,000
Maintenance - Fountain	\$700	\$387	\$350	\$737	\$700
Maintenance - Other Field (R&M General)	\$6,000	\$1,327	\$800	\$2,127	\$4,000
Maintenance - Recreation	\$1,500	\$230	\$750	\$980	\$1,500
Holiday Landscape Lighting	\$10,000	\$9,098	\$0	\$9,098	\$10,000
Operating Supplies	\$750	\$293	\$450	\$743	\$750
Sidewalk/Curb Cleaning	\$11,000	\$1,950	\$5,500	\$7,450	\$11,000
Miscellaneous	\$1,000	\$592	\$408	\$1,000	\$1,000
O&M Expenses	\$527,201	\$256,155	\$249,919	\$506,074	\$519,801
<u>Reserves</u>					
Transfer Out - Capital Projects- Paving - Baytree	\$71,783	\$0	\$71,783	\$71,783	\$75,370
Transfer Out - Capital Projects - Paving - IOB Funds	\$23,453	\$0	\$23,453	\$23,453	\$24,630
Transfer Out - Capital Projects - Reserves	\$68,901	\$0	\$68,901	\$68,901	\$43,125
Transfer Out - Community Beautification Fund	\$45,265	\$0	\$45,265	\$45,265	\$45,265
Transfer Out - Rebalance First Quarter Operating	\$21,203	\$0	\$0	\$0	\$40,904
Reserves	\$230,605	\$0	\$209,402	\$209,402	\$229,294
Total Expenses	\$901,365	\$347,048	\$544,902	\$891,950	\$902,296
Excess Revenues/(Expenditures)	\$0	\$471,497	(\$464,225)	\$7,272	\$0

Baytree
Community Development District
FISCAL YEAR 2021

REVENUES:

Maintenance Assessments

The District will levy a non-ad valorem assessment on all taxable property within the Baytree Community Development District in order to pay for operating & maintenance expenditures for the fiscal year.

Interest Income

Represents estimated interest earnings from cash balances in the District's operating account with Wells Fargo and investments through US Bank.

Miscellaneous Income (IOB Cost Share Agreement)

Represents estimated earnings from Isles of Baytree.

Miscellaneous Income

Represents estimated earnings from the sale of security gate transponders, pool access cards and tennis court instructor fees.

EXPENDITURES

Administrative:

Supervisor Fees

Chapter 190 of the Florida Statutes allows for a member of the Board of Supervisors to be compensated \$200 per meeting. This amount for the fiscal year is based upon 5 Supervisors attending 8 monthly meetings.

FICA Expense

Represents the Employer's share of Social Security and Medicare taxes withheld from Board of Supervisors checks.

Engineering

The District currently has a contract with Adkins Engineering to provide engineering service to the District. The contract includes preparation for board meetings, contract specifications, bidding, etc.

Assessment Administration

Expenses related to administering the annual assessments on the tax roll with the Brevard County Tax Collector.

Attorney Fees

The District currently has a contract with Billing, Cochran, Lyles, Mauro & Ramsey, P.A. to provide legal counsel services. This contract includes preparation for board meetings, review of contracts, review of agreements and resolutions and other research as directed by the Board of Supervisors and the District Manager.

Baytree

Community Development District

FISCAL YEAR 2021

Annual Audit

The District is required by Florida Statutes to arrange for an Independent audit of its financial records on an annual basis. The budget is based on the current rate for the annual audit.

Management Fees

The District has contracted with Governmental Management Services-Central Florida, LLC to provide Management, Accounting and Recording Secretary Services for the District. The services include, but not limited to, recording and transcription of board meetings, administrative services, budget preparation, all financial reporting, annual audits, etc.

Information Technology

The District incurs costs related to the District's accounting and information systems, District's website creation and maintenance, electronic compliance with Florida Statutes and other electronic data requirements.

Telephone

Telephone and fax machine.

Postage

The District incurs charges for mailing Board meeting agenda packages, overnight deliveries, checks for vendors and other required correspondence.

Insurance

The District's general liability, public official's liability and property insurance coverage is provided by the Florida Insurance Alliance (FIA). FIA specializes in providing insurance coverage to government agencies.

Tax Collector Fee

Represents charges from Brevard County Tax Collector's office for administration of the tax collection process.

Printing & Binding

The District incurs charges for printing and binding agenda packages and printing computerized checks, correspondence, stationery, envelopes, photocopies and other printed material.

Legal Advertising

The District does most of its legal advertising in the Florida Today. Publication amount is based on prior years cost for advertising regular meetings, special meetings, public hearings, etc.

Other Current Charges

Bank charges and any other miscellaneous expenses incurred during the year.

Office Supplies

The District incurs charges for supplies that need to be purchased during the fiscal year, including copier and printer toner cartridges, paper, file folders, binders, pens, paper clips, and other such office supplies.

Property Taxes

Represents the estimated non-ad valorem assessment from Brevard County that will be charged to the District.

Baytree
Community Development District
FISCAL YEAR 2021

Property Appraiser

Represents the Brevard County Property Appraiser fee to cover the cost of processing and distributing of non-ad valorem assessment information.

Dues, License & Subscriptions

The District is required to pay an annual fee to the Department of Economic Opportunity for \$175.

Operation and Maintenance:

Security Contract

The District currently has a contract with DSI Security Services to provide security service for the District.

DESCRIPTION	ANNUAL AMOUNT
REGULAR HOURS: CONTRACT COST OF \$19.43 PER HOUR FOR 356 DAYS	\$166,010
HOLIDAY HOURS: CONTRACT COST OF \$29.15 PER HOUR FOR 9 DAYS	\$6,296
	<u>\$172,306</u>

Security – Speed Control

The District utilizes police officers from the Brevard County Sheriff's Office to patrol the area and mitigate speeding issues within the District.

DESCRIPTION	WEEKLY AMOUNT	ANNUAL AMOUNT
POLICE PATROL (2 PATROLS PER WEEK @ \$99 PER PATROL)	\$192	\$2,000
		<u>\$2,000</u>

Gate Maintenance Contract

Represents annual contract amount from for maintenance of the automated gate entrance systems. The District currently has a contract with Access Control Technologies.

Maintenance - Gatehouse

Represents maintenance contract for gates, and any other maintenance cost the District may incur at the security gate house, i.e. plumbing, gate repairs, etc.

Baytree Community Development District FISCAL YEAR 2021

Telephone/Internet - Gatehouse/Pool

The District has a telephone at the front entrance for the security staff to make local calls. Additionally, the District has a phone line at the front and rear entrance for the automated gate access system, and an IP line at the front gate for the access system and the line for the emergency phone at the pool. The amount is based on projected monthly charges from AT&T.

	DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
131679593	201 BAYTREE DR FRONT GATE (Internet)	\$55	\$660
321 254-0017 857 3148	201 BAYTREE DR FRONT GATE	\$650	\$7,800
321 751-1034 001 3145	630 BAYTREE DR BACK GATE	\$165	\$1,980
321 751-0214 454 3143	8207 NATIONAL DR POOL AREA	\$170	\$2,040
287673584	630 BAYTREE DR BACK GATE (Internet)	\$70	\$840
287274865147	TABLETS	\$75	\$900
292703718	801 NATIONAL DRIVE	\$45	\$540
	CONTINGENCY		\$240
			<u>\$15,000</u>

Transponders

Accounts for costs associated with purchasing new transponders to replace those purchased by residents.

Field Management Fees

The District has contracted with Governmental Management Services-Central Florida, LLC to provide on-site field management of contracts for the District services such as landscape and lake maintenance. Services to include weekly onsite inspections, meetings with contractors and monitoring of utility accounts.

DESCRIPTION	WEEKLY AMOUNT	ANNUAL AMOUNT
FIELD MANAGEMENT FEES (GMS)	\$2,390	\$28,684
		<u>\$28,684</u>

Baytree

Community Development District

FISCAL YEAR 2021

Electric

Represents costs for electric for projects such as streetlights, signs, electric for well pumps, guardhouse, entrance features, fountain and pool house. Florida Power & Light provides this service.

	DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
00533-81406	8002 BRADWICK WAY # WALL	\$14	\$165
02781-39043	8207 NATIONAL DR # POOL HSE	\$550	\$6,600
04080-73153	609 BAYTREE DR # WALL	\$17	\$200
04396-25492	8205 NATIONAL DR # COURTS	\$50	\$600
09459-03086	8147 OLD TRAMWAY DR # ENTRANCE	\$20	\$240
11105-10375	7948 DAVENTRY DR # WALL	\$15	\$180
14771-79517	345 BAYTREE DR # PUMP	\$50	\$600
15604-14425	8005 KINGSWOOD WAY # FOUNTAIN	\$350	\$4,200
36008-52200	602 BAYTREE DR # SIGN	\$20	\$240
46619-40025	8253 OLD TRAMWAY DR # ENT SIGN	\$25	\$300
47131-19107	1409 SOUTHPOINTE CT# ENT SIGN	\$15	\$175
67950-66148	7951 DAVENTRY DR # PUMP STREET	\$50	\$600
724916-0156	7942 KINGSWOOD WAY #LIGHTS	\$20	\$240
73679-10572	201 BAYTREE DR # GRD HSE	\$135	\$1,620
83711-46575	8005 KINGSWOOD WAY # STREET LIGHTS	\$2,700	\$32,400
86596-45173	8005 KINGSWOOD WAY # PUMP	\$140	\$1,680
88573-27285	687 DEERHURST DR # PUMP	\$70	\$840
91260-64568	8128 OLD TRAMWAY DR # SIGN	\$15	\$180
99142-26460	8005 KINGSWOOD WAY# GATE	\$20	\$240
	Contingency		\$3,700
			<u>\$55,000</u>

Water & Sewer

Represents cost for water & sewer for expenses associated with the front guardhouse and community pool. City of Cocoa Utilities provides this utility service.

	DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
121573-112400	201 BAYTREE DR #GUARDHOUSE	\$60	\$720
167895-118058	8207 NATIONAL DR #POOL	\$800	\$9,600
	CONTINGENCY		\$1,180
			<u>\$11,500</u>

Gas

Represents cost of gas required for heating the community pool. Florida City Gas provides this utility service.

	DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
2932702542	8205 NATIONAL DR POOL HEATER	\$600	\$7,200
	CONTINGENCY		\$600
			<u>\$7,800</u>

Baytree
Community Development District
FISCAL YEAR 2021

Maintenance - Lakes

The District currently has a contract with ECOR to maintain its 66.46 acres of lakes. Additional funds are allocated for the installation of grass carp and unanticipated lake maintenance.

DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
LAKE MAINTENANCE	\$2,540	\$30,480
NATURAL AREAS MANAGEMENT: CONTRACT COST OF \$480 BI-MONTHLY		\$2,880
		<u>\$33,360</u>

Maintenance - Landscape Contract

The District currently has a contract with Tropic Care, Inc. to maintain its 352,000 Square Feet of Landscaping.

DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
LANDSCAPE MAINTENANCE	\$7,750	\$93,000
		<u>\$93,000</u>

Maintenance - Additional Landscape

Funding for trimming, replacement of trees/plants, and other routine landscape maintenance not covered under the landscape vendor contract.

Maintenance - Pool

The District has constructed a community swimming pool, which requires maintenance service five times per week.

DESCRIPTION	MONTHLY AMOUNT	ANNUAL AMOUNT
VENDOR: BEACH POOLS		
POOL MAINTENANCE		
SEPTEMBER THRU MAY - 3 DAYS/WEEK	\$625	\$5,625
JUNE THRU AUGUST - 5 DAYS/WEEK	\$800	\$2,400
CONTINGENCY - POOL REPAIRS		\$2,803
VENDOR: COVERALL OF ORLANDO		
JANITORIAL SERVICES	\$431	\$5,172
SUPPLIES		\$1,000
		<u>\$17,000</u>

Maintenance - Irrigation

Represents estimated cost for repairing irrigation line breaks, replacement of sprinklers, etc.

Maintenance - Lighting

Estimated cost for routine/replacement of fixtures.

Baytree
Community Development District
FISCAL YEAR 2021

Maintenance - Monuments

Estimated cost to pressure clean and paint monuments.

Maintenance - Fountain

The cost of providing preventative maintenance to the District fountains. The cost of service is \$175 per quarter.

Maintenance - Other Field

Miscellaneous costs related to additional pond work, cleaning storm drains, etc

Maintenance – Recreation

Estimated cost for routine maintenance for the District's recreational areas, such as paint, mulch, or repairs to playground area and nets, facility repair, or minor improvements to tennis court area.

Holiday Landscape Lighting

Estimated cost for installation of holiday lights and décor as well as supplies.

Operating Supplies

Purchase of supplies for the District's pool, gatehouse, etc.

Sidewalk/Curb Cleaning

Estimated cost for pressure washing the District-owned sidewalks throughout the community.

Miscellaneous

Any other miscellaneous expenses incurred during the year.

Reserves:

Transfer Out - Capital Projects - Paving - Baytree/IOB

The District has established a Pavement Management Fund in order to pay for resurfacing of roadways.

Transfer Out - Capital Projects - Reserves

Renewal and replacement costs such as replacement cost of the sidewalks, drainage repair, playground equipment, etc. See attached Capital Improvement Program Chart.

Transfer Out - Community Beautification Fund

Represents the assessments dedicated to the Community Beautification Fund.

Baytree
Community Development District
Proposed Budget FY 2021
Capital Projects Reserve

Description	Adopted Budget FY2020	Actual thru 03/31/20	Projected Next 6 Months	Total Projected 09/30/20	Proposed Budget FY 2021
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Revenues:

Beginning Fund Balance	\$13,268	\$68,986	\$0	\$68,986	\$37,992
Paving Contributions	\$0	\$28,000	\$0	\$28,000	\$0
Transfer In - Baytree	\$68,901	\$0	\$68,901	\$68,901	\$43,125
Interest Income	\$100	\$12	\$5	\$17	\$100

Total Revenues	\$82,269	\$96,997	\$68,906	\$165,903	\$81,217
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Expenses:

Lake Bank Restoration/Evaluation	\$30,000	\$0	\$25,000	\$25,000	\$30,000
Sidewalk/Gutter Repair	\$13,500	\$4,488	\$0	\$4,488	\$10,000
Drainage Maintenance	\$6,500	\$1,275	\$0	\$1,275	\$10,000
Curb -Tree Trimming/Replacements	\$6,500	\$3,950	\$0	\$3,950	\$6,500
Recreation Area Improvements	\$0	\$0	\$0	\$0	\$15,000
Playground Replacement	\$21,400	\$9,629	\$0	\$9,629	\$0
Landscaping	\$0	\$7,800	\$0	\$7,800	\$0
Pool Heater Replacement	\$4,200	\$3,928	\$0	\$3,928	\$0
Pool Refurbishing	\$0	\$21,693	\$1,627	\$23,320	\$0
Landscape Lighting	\$0	\$4,532	\$0	\$4,532	\$0
Pavillion Parking	\$0	\$43,899	\$0	\$43,899	\$0
Bank Fees	\$0	\$45	\$45	\$90	\$0

Total Expenses	\$82,100	\$101,239	\$26,672	\$127,911	\$71,500
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Excess Revenues/(Expenditures)	\$169	(\$4,242)	\$42,234	\$37,992	\$9,717
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Baytree CDD - Capital Improvement Program

Project Description	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Lake Bank Restoration	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
Sidewalk /Gutter Repair	\$ 13,500	\$ 10,000	\$ 10,000	\$ 10,000	\$ 14,500
Drainage Maintenance	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
Curb - Tree Trimming/Replacements	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500
Tennis Court Surface	\$ -	\$ -	\$ -	\$ -	\$ -
Playground	\$ 21,400	\$ -	\$ -	\$ -	\$ -
Pool Heater	\$ 4,200	\$ -	\$ -	\$ -	\$ -
Pool Furniture	\$ -	\$ -	\$ -	\$ -	\$ -
LED Gate Arms	\$ -	\$ -	\$ -	\$ -	\$ -
Rear Gate Camera System	\$ -	\$ -	\$ -	\$ -	\$ -
Pavilion Parking	\$ -	\$ -	\$ -	\$ -	\$ -
Gate Operators	\$ -	\$ -	\$ 40,000	\$ -	\$ -
Total	\$ 85,600	\$ 56,500	\$ 96,500	\$ 56,500	\$ 61,000

Baytree
Community Development District
Proposed Budget FY 2021
Pavement Management

Description	Adopted Budget FY2020	Actual thru 03/31/20	Projected Next 6 Months	Total Projected 09/30/20	Proposed Budget FY 2021
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Revenues:

Beginning Fund Balance	\$222,635	\$222,640	\$0	\$222,640	\$278,810
Transfer In - Baytree	\$71,783	\$0	\$71,783	\$71,783	\$75,370
Transfer In - IOB	\$23,453	\$0	\$23,453	\$23,453	\$24,630
Interest Income	\$75	\$50	\$50	\$100	\$75

Total Revenues	\$317,946	\$222,689	\$95,286	\$317,975	\$378,885
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Expenses:

Roadway Paving	\$0	\$39,165	\$0	\$39,165	\$0
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Total Expenses	\$0	\$39,165	\$0	\$39,165	\$0
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Excess Revenues/(Expenditures)	\$317,946	\$183,524	\$95,286	\$278,810	\$378,885
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	CARRY FORWARD SPLIT	
BAYTREE	\$255,357	\$330,802
IOB	\$23,453	\$48,083
	<u>\$278,810</u>	<u>\$378,885</u>

Baytree
Community Development District
Proposed Budget FY 2021
Community Beautification

Description	Adopted Budget FY2020	Actual thru 03/31/20	Projected Next 6 Months	Total Projected 09/30/20	Proposed Budget FY 2021
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Revenues:

Beginning Fund Balance	\$1,281	\$1,894	\$0	\$1,894	\$21,436
Transfer In - Baytree	\$45,265	\$0	\$45,265	\$45,265	\$45,265

Total Revenues	\$46,546	\$1,894	\$45,265	\$47,159	\$66,701
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Expenses:

Bank Fees	\$150	\$150	\$0	\$150	\$150
Beautification Projects	\$45,000	\$25,323	\$0	\$25,323	\$0
Contingency	\$0	\$150	\$100	\$250	\$0

Total Expenses	\$45,150	\$25,623	\$100	\$25,723	\$150
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Excess Revenues/(Expenditures)	\$1,396	(\$23,729)	\$45,165	\$21,436	\$66,551
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Baytree

Community Development District

O&M Assessment Calculation

	<u>FY 2020</u>	<u>FY 2021</u>	
Net Assessments	\$853,142	\$853,142	
Discounts (4%)	\$35,691	\$35,691	
Gross Assessments	<u>\$888,833</u>	<u>\$888,833</u>	
Less : Golf Course (2.25%)	\$19,999	\$19,999	
Adjusted Gross	<u>\$868,834</u>	<u>\$868,834</u>	
Assessable Units:			
Phase 1	304	304	
Phase 2	<u>157</u>	<u>157</u>	
Total	461	461	
			<u>Change From</u>
			<u>2020</u>
Per Unit O & M Assessments	<u>\$1,884.67</u>	<u>\$1,884.67</u>	<u>(\$0.00)</u>

FY 2021 Baytree CDD Assessments	Phase 1	Phase 2
Per Unit O & M	\$1,885	\$1,885

Isles of Baytree
Baytree Roadway Maintenance Cost Sharing Agreement
Proposed Budget FY2021

	FY21 Proposed Budget
Security	\$172,306
Maintenance - Gatehouse/Agreement	\$11,200
Telephone - Gatehouse	\$15,000
Utilities ¹	\$5,340
Maintenance - Lighting	\$250
Capital Reserve - Paving Management ²	\$24,630
Total	\$228,726
Less: Golf Course Contribution (2.25%)	(\$5,146)
Total to be assessed To Baytree CDD & Isles of Baytree HOA	\$223,580
Total Number of Lots	
Baytree Phase I	304
Baytree Phase II	157
Isles of Baytree	104
	565
Total Per Lot Assessment	\$396
Total Expenses divided by Total Units	
Proposed Amount for Isles of Baytree HOA for FY21	\$41,155

Notes

Total Utilities

201 Baytree Drive Guardhouse	\$3,360
201 Baytree Drive Guardhouse - Water	\$480
8005 Kingswood Way - Street Lights	\$1,500
	\$5,340

Capital Reserve Calculation is based on the following areas:

Baytree Boulevard
National Drive
Kingswood Drive

Total Area of Pavement	89,711
IOB Shared Roadway Area	22,093
Fraction of Shared Roadways	24.63%
Total Projected FY21 Paving Management	\$100,000
IOB Shared Cost	\$24,630

Baytree
Community Development District

Exhibit " A "

Allocation of Operating Reserve

Allocation of Operating Reserves	
<u>Estimated Funds Available</u>	
Beginning Fund Balance - Fiscal Year 2020	\$81,774
Projected Fiscal Year 2020 Excess (Deficit)	<u>\$7,272</u>
Total Estimated Funds Available First Quarter Operating Reserve- 9/30/20	<u>\$89,047</u>
Rebalance First Quarter Operating - FY 21	<u>\$40,904</u>
Total First Quarter at 9/30/20	<u>\$129,950</u>

<u>Allocation of Reserves</u>	
Estimated Capital Reserve Fund Balance (Carry forward Plus New FY21 Funds)	\$81,117
Estimated Beautification Fund Balance (Carry forward Plus New FY21 Funds)	<u>\$66,701</u>
Total Reserves for Capital Projects (Start of FY21)	<u>\$147,818</u>

Montecito
Community Development District

219 E. Livingston Street, Orlando, Florida 32801
Phone: 407-841-5524 – Fax: 407-839-1526

June 1, 2020

Brevard County Manager

Mr. Frank Abbate
2725 Judge Fran Jamieson Way, Bldg. C
Melbourne, Florida 32940

Satellite Beach City Manager

Courtney Barker
565 Cassia Blvd
Satellite Beach, FL 32937

Re: Montecito Community Development District
Proposed Budget Fiscal Year 2021

Dear Sir/Madam:

In accordance with chapter 190.008 (2)(b), Florida Statutes, enclosed please find one copy of the District's proposed budget for the Fiscal Year 2021 for purposes of disclosure and information only. The District will schedule a public hearing not less than 60 days from the date of this letter for adoption of the same. Should you have any questions regarding the enclosed, please feel free to contact me.

Sincerely,



Stacie Vanderbilt
Recording Secretary

Enclosures

RECEIVED

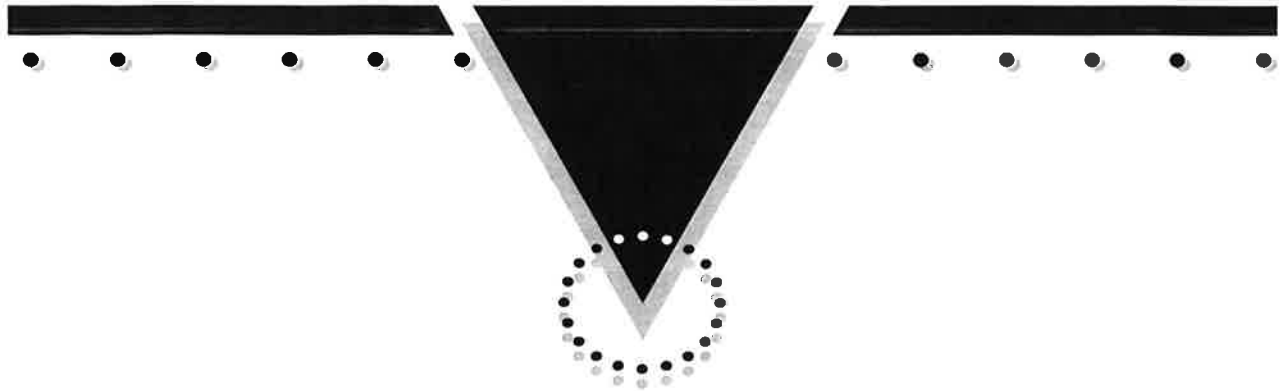
JUN 12 2020

BUDGET OFFICE

RECEIVED

JUN 11 2020

County Manager's
Office



Montecito Community Development District

**Proposed Budget
FY 2021**

GMS
COMMUNITY DEVELOPMENT SERVICES



Montecito Community Development District

Table of Contents

	<u>Pages</u>
General Fund	1-2
General Fund Narrative	3-12
Capital Reserve Fund	13
Disaster Reserve Fund	14
Debt Service Fund	15
Assessment Allocation Chart	16-17

Montecito
Community Development District
 General Fund
 Fiscal Year 2021

Adopted Budget FY 2020	Actuals Thru 3/31/20	Projected Next 6 Months	Projected Total Thru 9/30/20	Proposed Budget FY 2021
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Revenues

Maintenance Assessments	\$ 723,971	\$ 709,617	\$ 14,354	\$ 723,971	\$ 723,971
Interest Income	-	6	-	6	-
Gate & Amenity Access Income	-	1,380	-	1,380	-
Clubhouse Rental Income	-	900	-	900	-
Miscellaneous Income	-	220	-	220	-

Total Revenues

\$ 723,971	\$ 712,123	\$ 14,354	\$ 726,477	\$ 723,971
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Expenditures

Administrative Expenses

Supervisor Fees	\$ 7,200	\$ 3,000	\$ 3,600	\$ 6,600	\$ 7,200
District Management	40,000	20,000	20,000	40,000	41,200
District Engineer	30,000	14,728	15,000	29,728	30,000
District Counsel	30,000	12,347	15,000	27,347	30,000
Disclosure Report	1,500	1,500	-	1,500	1,500
Trustee Fees	3,500	1,458	2,042	3,500	3,500
Assessment Roll	5,000	5,000	-	5,000	5,000
Auditing Services	5,000	-	4,675	4,675	5,000
Arbitrage Rebate Calculation	500	450	-	450	500
Public Officials/General Liability Insurance	14,600	14,170	-	14,170	15,590
Legal Advertising	2,000	149	1,000	1,149	2,000
Dues, Licenses, & Subscriptions	175	175	-	175	175
Information Technology	2,400	660	600	1,260	2,400
Property Appraiser	250	211	-	211	250
Reimbursable Expenses	1,200	417	600	1,017	1,200
Contingency	500	143	250	393	500

Administrative Expenses Total

\$ 143,825	\$ 74,408	\$ 62,767	\$ 137,174	\$ 146,015
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20.2%

Operations and Maintenance Expenses

Field Management

Field Manager	\$ 18,000	\$ 9,000	\$ 9,000	\$ 18,000	\$ 18,540
Onsite Facility Supervisor Salary	38,480	19,192	22,126	41,318	44,252
Payroll Taxes	3,500	1,517	1,500	3,017	3,500
Workers Compensation Costs	1,600	1,772	-	1,772	1,949
Cell Phone & Mileage Reimbursement	600	150	150	300	600
ADP Fees	2,400	807	700	1,507	2,400
Property Insurance	30,000	26,622	-	26,622	29,284

Field Management Subtotal

\$ 94,580	\$ 59,060	\$ 33,476	\$ 92,536	\$ 100,525
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Amenity Center Operations

Repairs & Maintenance (Non-HVAC)	\$ 10,000	\$ 3,700	\$ 6,300	\$ 10,000	\$ 10,000
HVAC Repairs & Maintenance	2,000	76	1,000	1,076	2,000
Office Supplies	1,500	499	1,001	1,500	1,500
Janitorial Supplies	850	90	400	490	1,850
Janitorial Services	5,400	2,700	2,700	5,400	6,900
Pest Control & Termite Bond	921	240	700	940	1,000
Fitness Equipment Repairs & Maintenance	2,500	1,083	950	2,033	2,500
Playground Repairs & Maintenance	1,000	-	500	500	1,000
Pool Service Repairs & Maintenance	12,500	7,597	5,000	12,597	12,500

Amenity Center Operations Subtotal

\$ 36,671	\$ 15,985	\$ 18,551	\$ 34,536	\$ 39,250
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Montecito
Community Development District
 - General Fund
 Fiscal Year 2021

	Adopted Budget FY 2020	Actuals Thru 3/31/20	Projected Next 6 Months	Projected Total Thru 9/30/20	Proposed Budget FY 2021	
<u>Irrigation</u>						
Irrigation Repairs & Maintenance	\$ 35,000	\$ 8,033	\$ 26,967	\$ 35,000	\$ 35,000	
Irrigation Monitoring	4,500	2,250	2,250	4,500	4,500	
Hoover Pumps Repairs & Maintenance	15,000	6,204	8,796	15,000	15,000	
<u>Irrigation Subtotal</u>	<u>\$ 54,500</u>	<u>\$ 16,486</u>	<u>\$ 38,014</u>	<u>\$ 54,500</u>	<u>\$ 54,500</u>	
<u>Lakes & Fountains</u>						
Aquatic Maintenance	\$ 5,340	\$ 2,970	\$ 2,970	\$ 5,940	\$ 5,940	
Fountain Service Repairs & Maintenance	10,000	3,797	6,203	10,000	10,000	
<u>Lakes & Fountains Subtotal</u>	<u>\$ 15,340</u>	<u>\$ 6,767</u>	<u>\$ 9,173</u>	<u>\$ 15,940</u>	<u>\$ 15,940</u>	
<u>Landscaping</u>						
Landscaping Contracted Services	\$ 75,405	\$ 37,702	\$ 37,702	\$ 75,405	\$ 75,405	
Additional Landscaping Repairs & Maintenance	15,000	5,686	7,500	13,186	15,000	
Mulch	11,334	7,661	3,673	11,334	12,334	
Palm Tree Maintenance	14,000	150	13,850	14,000	14,000	
Oak Tree Maintenance	6,500	4,680	-	4,680	6,500	
<u>Landscaping Subtotal</u>	<u>\$ 122,238</u>	<u>\$ 55,879</u>	<u>\$ 62,725</u>	<u>\$ 118,604</u>	<u>\$ 123,238</u>	
<u>Common Areas, Right of Ways & Perimeter Walls</u>						
Street Light Repairs & Maintenance	\$ 5,000	\$ 962	\$ 2,500	\$ 3,462	\$ 5,000	
Entrance Vehicular Gates Repairs & Maintenance	5,500	4,306	1,194	5,500	5,500	
Pedestrian Entry Gates & Walls Maintenance	5,000	778	2,500	3,278	5,000	
Common Area Repairs & Maintenance	3,000	4,511	-	4,511	3,000	
Sidewalk Cleaning	6,000	1,400	4,600	6,000	6,000	
<u>Common Areas, Right of Ways & Perimeter Walls Subtotal</u>	<u>\$ 24,500</u>	<u>\$ 11,956</u>	<u>\$ 10,794</u>	<u>\$ 22,750</u>	<u>\$ 24,500</u>	
<u>Security Monitoring Services</u>						
Fire Detection Services	\$ -	\$ -	\$ 702	\$ 702	\$ 1,404	
Access Control Services	1,806	938	938	1,876	1,876	
Intrusion Services	939	488	938	1,426	1,876	
Security Monitoring Repairs & Maintenance	505	841	354	1,195	1,000	
<u>Security Subtotal</u>	<u>\$ 3,250</u>	<u>\$ 2,267</u>	<u>\$ 2,578</u>	<u>\$ 5,199</u>	<u>\$ 6,156</u>	
<u>Utilities</u>						
Electric Services	\$ 43,000	\$ 17,340	\$ 19,800	\$ 37,140	\$ 43,000	
Telephone, Fax & Internet	1,900	997	997	1,994	2,200	
Water & Sewer Services	4,000	2,440	1,560	4,000	4,000	
Gate Kiosk Internet Services	2,500	1,200	1,200	2,400	2,600	
<u>Utilities Subtotal</u>	<u>\$ 51,400</u>	<u>\$ 21,977</u>	<u>\$ 23,557</u>	<u>\$ 45,534</u>	<u>\$ 51,800</u>	
<u>Other</u>						
Contingency / Miscellaneous Expense	\$ 5,000	\$ 2,149	\$ 2,851	\$ 5,000	\$ 5,000	
<u>Other Subtotal</u>	<u>\$ 5,000</u>	<u>\$ 2,149</u>	<u>\$ 2,851</u>	<u>\$ 5,000</u>	<u>\$ 5,000</u>	
<u>Operations & Maintenance Expenses Total</u>	<u>\$ 407,479</u>	<u>\$ 192,528</u>	<u>\$ 201,718</u>	<u>\$ 394,600</u>	<u>\$ 420,910</u>	58.1%
Total Expenditures	\$ 551,304	\$ 266,936	\$ 264,484	\$ 531,774	\$ 566,925	
<u>Reserves</u>						
Disaster Reserve Transfer Out	\$ 25,000	\$ 25,000	\$ -	\$ 25,000	\$ 25,000	
Capital Reserve Transfer Out	147,667	125,000	44,703	169,703	132,046	
Reserves Total	\$ 172,667	\$ 150,000	\$ 44,703	\$ 194,703	\$ 157,046	21.7%
Total Expenditures & Reserves	\$ 723,971	\$ 416,936	\$ 309,187	\$ 726,477	\$ 723,971	100.0%
Excess Revenues/ (Expenditures)	\$ -	\$ 295,188	\$ (294,834)	\$ -	\$ -	

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Revenues:

The District's primary source of generating revenues is from **Maintenance Assessments**. In addition, other non-budgeted sources of revenue may be realized throughout the fiscal year from items such as: Interest Income, Gate & Amenity Access Replacement Cards and FOB income, and Club House Rental Income.

Maintenance Assessments

The District levies Non-Ad Valorem Assessments on all of the assessable property within the District to pay for operating expenditures incurred during the Fiscal Year.

Expenditures:

Administrative Expenses

Supervisor Fees

Chapter 190, Florida Statutes, allows for each Board member to receive \$200 per meeting, not to exceed \$4,800 per year paid to each Supervisor for the time devoted to District business and meetings. The amount for the fiscal year is based upon 3 Supervisors attending 12 monthly meetings.

District Management

The District has contracted with Governmental Management Services-Central Florida, LLC to provide management, accounting, and recording secretary services. These services include, but are not limited to, advertising, recording and transcribing of Board meetings, administrative services, budget preparation, financial reporting, and assisting with annual audits.

District Engineer

The District's Engineer, Dewberry Engineers, Inc., will be providing general engineering services to the District, e.g., attendance and preparation for the monthly Board meetings, review of invoices and requisitions, preparation and review of contract specifications and bid documents, and various projects assigned as directed by the Board of Supervisors and the District Manager.

District Counsel

The District's Legal Counsel, Billings, Cochran, Lyles, Mauro & Ramsey P.A., provides general legal services to the District. Among these services are attendance at and preparation for monthly Board meetings, review of operating and maintenance contracts, review of agreements and resolutions, and other research assigned as directed by the Board of Supervisors and the District Manager.

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Disclosure Report

The District is required to prepare an annual disclosure report in accordance with the Continuing Disclosure Agreement and Rule 15c2-12(b)(5) promulgated by Securities and Exchange Commission. The annual report is filed on the Municipal Securities Rulemaking Board (EMMA) website.

Trustee Fees

The District pays monthly fees plus reimbursable expenses to UMB Bank as Trustee for the District's Series 2006AB, Special Assessment Revenue Bonds.

Assessment Roll

The District has contracted with Governmental Management Services-CF, LLC to maintain the assessment roll and annually certify for collection a Non-Ad Valorem assessment for operating and debt service expenses, calculate, collect, record and transmit prepaid assessments, maintain the District's lien book along with various other responsibilities.

Auditing Services

The District is required by Florida Statutes to have an independent certified public accounting firm to conduct an annual audit of its financial records. The District's current auditing firm is Berger, Toombs, Elam, Gaines & Frank.

Arbitrage Rebate Calculation

The District is required to annually have an arbitrage rebate calculation on the District's Series 2006 Special Assessment Revenue Bonds. The District has contracted with LLS Tax Solutions, Inc. to calculate the arbitrage rebate liability and submit a report to the District.

Public Officials/General Liability Insurance

The District's general liability and public officials' liability insurance coverage is provided by Florida Insurance Alliance (FIA) who specializes in providing insurance coverage to governmental agencies.

Legal Advertising

The District will incur expenditures related to legal advertising. The items for which the District will advertise include, but are not limited to meeting schedules, special meeting notices, and public hearings, bidding etc. for the District based on statutory guidelines.

Dues, Licenses & Subscriptions

The District is required to pay an annual fee to the Department of Economic Opportunity for \$175. This is the only anticipated expenditure for this category.

Information Technology

The District incurs costs related to the District's accounting and information systems, District's website creation and maintenance, electronic compliance with Florida Statutes and other electronic data requirements.

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Property Appraiser

Represents a fee charged by the Brevard County Property Appraiser's office for assessment administration services.

Reimbursable Expenses

Represents expenses incurred that are considered reimbursable by the district, such as: mailing of agenda packages, overnight deliveries, correspondence, printing and binding agenda packages for board meetings, printing of computerized checks, stationary, envelopes, miscellaneous office supplies, etc.

Contingency

Represents any miscellaneous expenses incurred during the fiscal year.

Operations and Maintenance Expenses

These are the budgeted items that the CDD Board along with District Management have accessed necessary for the routine operations and maintenance of the District.

Field Management

Field Manager

The District has contracted with Governmental Management Services – Central Florida, LLC to provide onsite field management of contracts for the District Services such as landscape and lake maintenance. Services to include onsite inspections, meetings with contractors and monitoring of utility accounts.

Onsite Facility Supervisor Salary

The District incurs costs to employ a facility attendant who provides overall supervision of administration and appearance of the District's public facilities and amenities. The District pays its employee through ADP.

Payroll Taxes

Represents payroll taxes incurred for salaries paid throughout the fiscal year.

Workers Compensation Costs

The District will incur costs related to insurance premiums for worker's compensation policies.

Cell Phone & Mileage Reimbursement

The District will incur costs related to cell phone and mileage reimbursements incurred throughout the year. Currently, the District provides its facility attendant a reimbursement of \$25 monthly for cell phone usage. The remaining \$300 pertains to estimated costs for mileage.

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

ADP Fees

Represents processing charges for salaries paid through ADP.

Property Insurance

Represents the cost of annual coverage of property insurance. Coverage is provided by Florida Insurance Alliance (FIA). FIA specializes in providing insurance coverage to governmental agencies.

Amenity Center Operations

Repairs & Maintenance (Non-HVAC)

Represents estimated costs for maintaining the amenity center throughout the fiscal year.

HVAC Repairs & Maintenance

Represents estimated costs of maintaining the A/C and heating systems.

Office Supplies

The District incurs cost for various office supplies as part of the day-to-day operations of the Amenity Center.

Janitorial Supplies

Represents any minimal costs for janitorial supplies and/or services.

Janitorial Services

The District has contracted with Coverall Central Florida to provide commercial cleaning services 3 days a week for the clubhouse. Services also include wiping equipment every two weeks and quarterly window cleaning.

Description	Monthly	Annually
208 Montecito Drive	\$450	\$5,400
Total		\$5,400

Pest Control & Termite Bond

The District has contracted with Apex Pest Control, Inc. to provide bi-monthly pest control services. The District also incurs an annual termite bond fee with Price Termite & Pest Control.

Description	Bi-Monthly	Annually
208 Montecito Drive	\$80	\$480
Termite Bond		\$460
Contingency		\$60
Total		\$1,000

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Fitness Equipment Repairs & Maintenance

Represents estimated costs for maintaining the fitness equipment owned by the District. Preventative Maintenance is provided by Brown Fitness Services, LLC.

Description	Quarterly	Annually
Preventative Maintenance	\$225	\$900
Repairs & Contingency		\$1,600
Total		\$2,500

Playground Repairs & Maintenance

Represents any repairs and maintenance costs incurred on the District's playground equipment.

Pool Service Repairs & Maintenance

The District has contracted with Brevard Pools for all expenses related to the repairs and maintenance of the swimming pool facilities. These services include, but are not limited to, general cleaning, water testing, chlorinating, balancing PH, adding algaecide, balancing alkalinity, cleaning filters, providing technical support, and advising the District of any necessary repairs.

Description	Monthly	Annually
Pool Maintenance – October to March	\$545	\$3,270
Pool Maintenance – April to September	\$795	\$4,770
Repairs & Contingency		\$4,460
Total		\$12,500

Irrigation

Irrigation Repairs & Maintenance

The District will incur expenditures related to the maintenance of the irrigation systems.

Irrigation Monitoring

The District has contracted with Insight Irrigation, LLC to provide irrigation monitoring services that include assistance with: run checks, leaks, valve issues, controller issues, sensor issues, backup data, management of irrigation schedules and updates to online maps.

Montecito
Community Development District
 General Fund Budget
 Fiscal Year 2021

Hoover Pumps Repairs & Maintenance

The District will incur costs related to the repairs and preventative maintenance of its Hoover pumps which is provided by Hoover Pumping Systems.

Description	Annually
Hoover Pump 1 #4978 – Patrick Drive	\$2,590
Hoover Pump 2 #5975 – Point Lobos Drive & Monterey Drive	\$2,590
Hoover Pump 3 #8563 – Phase 2C	\$2,290
Repairs & Contingency	\$7,530
Total	\$15,000

Lakes & Fountains

Aquatic Maintenance

The District has contracted with American Ecosystems, Inc. for the care and maintenance of its six lakes which includes shoreline grass, brush and vegetation control.

Description	Monthly	Annually
Aquatic Maintenance	\$495	\$5,940
Total		\$5,940

Fountain Service Repairs & Maintenance

Represents the estimated costs for any repairs and maintenance pertaining to the six District lake fountains.

Description	Quarterly	Annually
Lake Fountain Maintenance	\$480	\$1,920
Repairs & Contingency		\$8,080
Total		\$10,000

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Landscaping

Landscaping Contracted Services

The District has a contract with Paradise Lawns and Landscaping, Inc. to maintain the landscaping located within the District. These services include monthly landscape maintenance such as mowing, edging, trimming, weed and disease control, fertilization, pest control, pH adjustments, pruning, and irrigation inspections. The annual amount is based upon the following:

Description	Monthly	Annually
Landscape Maintenance	\$6,284	\$75,405
Total		\$75,405

Additional Landscaping Repairs & Maintenance

The District will incur landscape related expenditures that fall outside of the annual maintenance contract. Examples include: plant replacement and sod replacement.

Mulch

Represents estimated costs for supplemental mulch to be added during the fiscal year.

Palm Tree Maintenance

The District will incur costs for the maintenance of the palm trees.

Oak Tree Maintenance

The District will incur costs for the maintenance of the oak trees.

Common Areas, Right of Ways & Perimeter Walls

Street Light Repairs & Maintenance

The District will incur costs to maintain the street lights and decorative light fixtures throughout the District.

Entrance Vehicular Gate Repairs & Maintenance

Represents any gate repairs and maintenance costs the District may incur throughout the fiscal year. This also includes preventative maintenance provided by Florida Door Control, Inc. of \$2,379.92 annually.

Pedestrian Entry Gates & Walls Maintenance

The District will incur expenditures to maintain the pedestrian gates, entry monuments and walls throughout the fiscal year.

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Common Area Repairs & Maintenance

Represents costs related to the maintenance of the District's common areas.

Sidewalk Cleaning

Represents the estimated costs of pressure washing the sidewalks annually.

Security

Fire Detection Services

Represents monitoring services provided by Sonitrol for the fire alarm systems.

Description	Monthly	Annually
208 Montecito Drive	\$117	\$1,404
Total		\$1,404

Access Control Services

Represents monitoring services provided by Sonitrol for the District's access control systems.

Description	Monthly	Annually
208 Montecito Drive	\$156	\$1,876
Total		\$1,876

Intrusion Services

Represents monitoring services provided by Sonitrol for the District's burglary systems.

Description	Monthly	Annually
208 Montecito Drive	\$156	\$1,876
Total		\$1,876

Security Monitoring Repairs & Maintenance

Represents maintenance trip services and repairs provided by Sonitrol for the District's burglary, access control and fire alarm monitoring systems.

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Utilities

Electric Services

The District has the following electric accounts with Florida Power & Light Company for general purposes.

Description	Monthly	Annually
140 Clemente Drive #Pump (Hoover Pump 2 #5975)	\$250	\$3,000
208 Montecito Drive #Clubhouse (Amenity Center)	\$650	\$7,800
308 Montecito Drive #Irrigation Pump (Hoover Pump 1 #4978)	\$800	\$9,600
654 Mission Bay Drive #Gate (South Patrick Entrance)	\$350	\$4,200
686 Carlsbad Drive #Irrigation (Hoover Pump 3 #8563)	\$100	\$1,200
688 Carlsbad Drive #LTS	\$100	\$1,200
711 Monterey Drive #Irrigation	\$900	\$10,800
790 Palisades Drive #Entrance (Shearwater Entrance)	\$100	\$1,200
Contingency		\$4,000
Total		\$43,000

Telephone, Fax & Internet

The District will incur cost for telephone, fax and internet service related to the amenity center. These services are provided by Spectrum.

Description	Monthly	Annually
208 Montecito Drive	\$166	\$1,992
Contingency		\$208
Total		\$2,200

Water & Sewer Services

The District has the following water and sewer service account with the City of Melbourne for its amenity center.

Description	Monthly	Annually
208 Montecito Drive	\$250	\$3,000
Contingency		\$1,000
Total		\$4,000

Montecito
Community Development District
General Fund Budget
Fiscal Year 2021

Gate Kiosk Internet Services

The District will incur costs to provide internet services to the two gatehouses it owns. These services are provided by Spectrum.

Description	Monthly	Annually
Gate Kiosk 1 – Shearwater Parkway Kiosk	\$100	\$1,200
Gate Kiosk 2 – South Patrick Kiosk	\$100	\$1,200
Contingency		\$200
Total		\$2,600

Other

Contingency

Monies collected and allocated for expenses that the District could incur miscellaneous throughout the year, which may not fit into any standard categories.

Reserves:

Disaster Reserves

Funds collected and reserved for expenses related to disasters like hurricanes.

Capital Reserves

Funds collected and reserved for the replacement of and/or purchase of new capital improvements throughout the District.

Montecito
Community Development District
Capital Reserve Fund
Fiscal Year 2021

Adopted Budget FY 2020	Actuals Thru 3/31/20	Projected Next 6 Months	Projected Total Thru 9/30/20	Proposed Budget FY 2021
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Revenues

Beginning Fund Balance	\$ 65,380	\$ 94,657	\$ -	\$ 94,657	\$ 17,653
Transfer In	147,667	125,000	44,703	169,703	132,046
Total Revenues	\$ 213,047	\$ 219,657	\$ 44,703	\$ 264,360	\$ 149,699

Expenditures

Capital Outlay *	\$ 174,000	\$ 189,890	\$ 56,817	\$ 246,707	\$ -
Total Expenditures	\$ 174,000	\$ 189,890	\$ 56,817	\$ 246,707	\$ -
Excess Revenues/(Expenditures)	\$ 39,047	\$ 29,767	\$ (12,114)	\$ 17,653	\$ 149,699

FY 20 Capital Outlay Expenses	
Bike Racks	\$ 6,987
Pump Station #2 Replacement	\$ 58,238
Crosswalk/Parking Spot Painting	\$ 3,000
Landscape Installations	\$ 30,127
Pool Resurfacing	\$ 37,757
Clock D Wire Conversion	\$ 26,400
Pergolas	\$ 20,094
Pool Motor Installation	\$ 3,295
Fountain Pump Installation	\$ 3,992
Total:	\$ 189,890

FY 20 Projected Capital Outlay Expenses	
Additional Landscape Installations	\$ 15,317
Benches	\$ 13,500
Security System Upgrade	\$ 12,000
Wall Painting	\$ 10,000
North Gate	\$ 6,000
Total:	\$ 56,817

Montecito
Community Development District
Disaster Reserve Fund
Fiscal Year 2021

Adopted Budget FY 2020	Actuals Thru 3/31/20	Projected Next 6 Months	Projected Total Thru 9/30/20	Proposed Budget FY 2021
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Revenues

Beginning Fund Balance	\$ 50,000	\$ 50,000	\$ -	\$ 50,000	\$ 75,000
Transfer In	25,000	25,000	-	25,000	25,000
Total Revenues	\$ 75,000	\$ 75,000	\$ -	\$ 75,000	\$ 100,000

Expenditures

Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -
Excess Revenues/(Expenditures)	\$ 75,000	\$ 75,000	\$ -	\$ 75,000	\$ 100,000

Montecito
Community Development District
Debt Service Fund - Series 2006
Fiscal Year 2021

Adopted Budget FY 2020	Actuals Thru 3/31/20	Projected Next 6 Months	Projected Total Thru 9/30/20	Proposed Budget FY 2021
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Revenues

Special Assessments- Tax Roll (1)	\$ 294,690	\$ 326,946	\$ -	\$ 326,946	\$ 294,690
Special Assessments - Lot Closings - Series 2006A	-	15,801	-	15,801	-
Special Assessments - Lot Closings - Series 2006B	-	363,321	-	363,321	-
Prepayments - Series 2006A	-	64,776	-	64,776	-
Prepayments - Series 2006B	-	844,704	-	844,704	-
Interest	-	7,157	3,500	10,657	-

Total Revenues

\$ 294,690	\$ 1,622,705	\$ 3,500	\$ 1,626,205	\$ 294,690
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Expenditures

Debt Service Obligation	\$ 294,690	\$ 946,025	\$ -	\$ 946,025	\$ 294,690
Trustee Fees	-	2,351	9,000	11,351	-
SPE Costs	-	-	-	-	-
Transfer Out	-	-	-	-	-

Total Expenditures

\$ 294,690	\$ 948,376	\$ 9,000	\$ 957,376	\$ 294,690
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Excess Revenues/(Expenditures)

\$ -	\$ 674,329	\$ (5,500)	\$ 668,829	\$ -
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Lot Size	Units	Gross Per Unit	Gross Annual
Townhomes	143	\$ 900	\$ 128,700
Single Family	127	\$ 1,200	\$ 152,400
Townhomes (Phase 2C)	36	\$ 900	\$ 32,400
			\$ 313,500
		Less: Discounts and Collections	\$ 18,810
		Net Annual Assessment	\$ 294,690

(1) Mid-Rise and High-Rise Condos are not encumbered by the Series 2006A Bonds.

Montecito Community Development District

Fiscal Year 2021 O&M and Debt Service Assessment Schedule

Description	Admin. Budget	Field/Reserve Budget	Total
Total O&M Budget	\$146,015	\$577,956	\$723,971
Assess. Allocation - Settlement	\$0	\$0	\$0
Balance Forward	\$0	\$0	\$0
Net Assessments	\$146,015	\$577,956	\$723,971
Collection Cost (6%)	\$9,320	\$36,891	\$46,211
Gross Assessment	\$155,335	\$614,847	\$770,182

Admin. Budget Bonds	Admin. Budget No Bonds	Total
\$5,500	\$140,515	\$146,015
\$33,555	(\$33,555)	\$0
\$0	\$0	\$0
\$39,055	\$106,960	\$146,015
\$2,493	\$6,827	\$9,320
\$41,548	\$113,787	\$155,335

Operations and Maintenance

Lot Size	Units	EAU Factor	Total EAU's	% Total EAU's	% Total EAU Bond Expense	Admin. Budget Bonds	Admin. Budget No Bonds	Field/Reserve Budget	Total	O&M Per Unit (Net)	O&M Per Unit (Gross)(1)
Townhomes	294	0.75	220.5	28%	63%	\$24,782	\$29,797.45	\$366,732	\$421,311	\$1,433.03	\$1,524.50
Single Family	127	1.00	127	16%	37%	\$14,273	\$17,162.25	\$211,224	\$242,660	\$1,910.71	\$2,032.67
Total			347.5		100%	\$39,055	\$46,960	\$577,956	\$663,971		
<u>Condo's</u>											
Mid-Rise	224	1.00	224	28%		\$0	\$30,270	\$0	\$30,270	\$135.14	\$143.76
High-Rise	176	1.25	220	28%		\$0	\$29,730	\$0	\$29,730	\$168.92	\$179.70
			444			\$0	\$60,000	\$0	\$60,000		
Total	821		791.5	100%		\$39,055	\$106,960	\$577,956	\$723,971		

Montecito Community Development District

Fiscal Year 2021 O&M and Debt Service Assessment Schedule

Series 2006A Debt Service Assessments

Lot Size	Debt Units Units	EAU Factor	Net Annual	% Total EAU's	Annual Debt Service	Net Annual Per Unit	Gross Annual Per Unit(1)
Townhomes	293	0.75	220	63%	\$251,871	\$860	\$900
Single Family	127	1.00	127	37%	\$145,563	\$1,146	\$1,200
Total			347	100%	\$397,434		

Combined Operations and Maintenance and Debt Service Assessments

Lot Size	Gross O&M Per Unit	Gross Debt Per Unit	Total Gross Per Unit (1)
Townhomes	\$1,525	\$900	\$2,425
Single Family	\$2,033	\$1,200	\$3,233
<u>Condo's</u>			
Mid-Rise	\$144	\$0	\$144
High-Rise	\$180	\$0	\$180

(1) Includes 6% for early payment discount and collection cost for tax collector.

Viera East
Community Development District

9145 Narcoossee Rd, Suite A206, Orlando, FL, 32827 Phone: 407-841-5524 --- Fax: 407-839-1526

June 4, 2020

Brevard County Manager

Frank Abbate
2725 Judge Fran Jamieson Way
Bldg. C
Viera, FL 32940

Re: Viera East Community Development District Approved Budget Fiscal Year 2021

Dear Mr. Abbate,

In accordance with chapter 190.008 (2)(b), Florida Statutes, please find enclosed one (1) copy of the District's approved budget for Fiscal Year 2021 for purposes of disclosure and information only. The District will schedule a public hearing no less than 60 days from the date of this letter for adoption of the same. Should you have any questions regarding the enclosed, please contact me at (865) 617-8194.

Sincerely,



Hannah Smith
Staff Accountant

Enclosures

RECEIVED
JUN 12 2020
BUDGET OFFICE

RECEIVED
JUN 11 2020
County Manager's
Office

Viera East

Community Development District

Approved Budget

FY 2021



GMS

**Viera East
Community Development District**

Table of Contents

	<u>Pages</u>
General Fund	1-2
General Fund Narrative	3-10
Capital Reserve	11
Debt Service	12
Debt Service Fund - Series 2006 Amortization	13
Golf Course	14-17
Golf Course Narrative	18-28
Recreation Fund Debt Service -Series 2012 Amortization	29

Viera East
Community Development District
General Fund
Approved Operating Budget
Fiscal Year 2021

Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Revenues

Maintenance Assessments	\$808,158	\$808,157	\$769,715	\$24,439	\$794,153	\$808,157
Golf Course Administrative Services	\$56,280	\$56,280	\$32,830	\$23,450	\$56,280	\$56,280
Interest Income	\$10	\$100	\$5	\$0	\$5	\$100
Miscellaneous Income	\$0	\$0	\$0	\$0	\$0	\$0

Total Revenues

\$864,447	\$864,536	\$802,549	\$47,889	\$850,438	\$864,536
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Administrative Expenditures

Supervisors Fees	\$32,286	\$30,496	\$12,020	\$15,523	\$27,543	\$30,496
Engineering Fees	\$15,575	\$5,000	\$3,025	\$960	\$3,985	\$5,000
Attorney's Fees	\$8,053	\$5,000	\$2,632	\$1,500	\$4,132	\$5,000
Dissemination	\$1,000	\$1,000	\$583	\$417	\$1,000	\$1,000
Trustee Fees	\$6,134	\$5,600	\$3,267	\$2,333	\$5,600	\$5,600
Annual Audit	\$5,711	\$6,500	\$3,792	\$2,708	\$6,500	\$6,500
Collection Agent	\$2,500	\$2,500	\$1,458	\$1,042	\$2,500	\$2,500
Management Fees	\$100,440	\$100,440	\$58,590	\$41,850	\$100,440	\$100,440
Postage	\$4,901	\$1,500	\$1,820	\$500	\$2,320	\$1,500
Printing & Binding	\$1,339	\$2,500	\$799	\$690	\$1,490	\$2,500
Insurance- Liability	\$6,280	\$7,293	\$3,964	\$2,832	\$6,796	\$7,475
Legal Advertising	\$196	\$2,500	\$0	\$500	\$500	\$1,500
Other Current Charges	\$1,048	\$1,500	\$407	\$318	\$725	\$1,500
Office Supplies	\$281	\$3,000	\$144	\$107	\$251	\$1,500
Dues & Licenses	\$175	\$175	\$102	\$73	\$175	\$175
Information Technology	\$3,400	\$3,400	\$1,983	\$1,417	\$3,400	\$3,400

Total Administrative

\$189,317	\$178,404	\$94,587	\$72,770	\$167,357	\$176,086
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Operating Expenditures

Salaries	\$138,157	\$141,817	\$83,252	\$57,704	\$140,956	\$149,299
Administration Fee	\$1,555	\$1,566	\$943	\$670	\$1,613	\$1,659
FICA Expense	\$10,390	\$10,849	\$5,844	\$4,241	\$10,085	\$11,421
Health Insurance	\$8,135	\$8,551	\$8,361	\$5,500	\$13,861	\$16,914
Workers Compensation	\$4,383	\$2,780	\$2,274	\$1,601	\$3,875	\$2,926
Unemployment	\$954	\$853	\$836	\$300	\$1,136	\$853
Other Contractual	\$7,761	\$7,000	\$4,738	\$2,874	\$7,612	\$7,500
Training	\$0	\$500	\$0	\$250	\$250	\$500
Uniforms	\$0	\$500	\$0	\$250	\$250	\$500

Total Operating

\$171,335	\$174,416	\$106,248	\$73,389	\$179,637	\$191,572
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Maintenance Expenditures

Canal Maintenance	\$12,561	\$14,000	\$0	\$5,000	\$5,000	\$14,000
Lake Bank Restoration	\$0	\$60,000	\$55,950	\$0	\$55,950	\$60,000
Environmental Services	\$28,520	\$20,000	\$3,990	\$2,500	\$6,490	\$20,000
Water Management System	\$96,254	\$99,000	\$58,382	\$39,590	\$97,972	\$99,000
Control Burns	\$0	\$15,000	\$0	\$500	\$500	\$10,000
Contingencies	\$894	\$5,000	\$985	\$500	\$1,485	\$3,000
Fire Line Management	\$1,502	\$5,000	\$975	\$500	\$1,475	\$4,000
Basin Repair	\$5,408	\$4,000	\$1,585	\$500	\$2,085	\$4,000

Total Maintenance

\$145,139	\$222,000	\$121,867	\$49,090	\$170,957	\$214,000
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Viera East
Community Development District
General Fund
Approved Operating Budget
Fiscal Year 2021

Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Grounds Maintenance Expenditures

Salaries	\$131,647	\$154,278	\$80,239	\$55,223	\$135,462	\$145,176
Administrative Fees	\$3,446	\$3,695	\$2,093	\$1,488	\$3,581	\$3,684
FICA	\$9,064	\$11,802	\$5,959	\$3,808	\$9,767	\$11,106
Health Insurance	\$13,116	\$16,867	\$9,172	\$6,267	\$15,439	\$18,858
Workers Compensation	\$3,398	\$3,024	\$2,191	\$1,507	\$3,699	\$2,845
Unemployment	\$1,877	\$2,120	\$1,810	\$220	\$2,030	\$2,120
Telephone	\$5,167	\$5,000	\$3,569	\$2,654	\$6,223	\$6,250
Utilities	\$4,923	\$5,000	\$3,812	\$2,337	\$6,149	\$5,500
Property Appraiser	\$1,986	\$1,990	\$1,988	\$0	\$1,988	\$1,990
Insurance- Property	\$1,618	\$1,395	\$882	\$630	\$1,512	\$1,663
Repairs	\$22,080	\$12,000	\$20,728	\$3,680	\$24,408	\$15,000
Fuel	\$15,564	\$7,500	\$8,061	\$4,651	\$12,712	\$10,000
Park Maintenance	\$2,460	\$3,000	\$505	\$156	\$660	\$2,500
Sidewalk Repair	\$198	\$5,000	\$11,118	\$0	\$11,118	\$5,000
Chemicals	\$1,802	\$5,000	\$2,505	\$1,035	\$3,540	\$4,000
Contingencies	\$5,471	\$5,000	\$735	\$250	\$985	\$4,000
Refuse	\$5,577	\$8,000	\$3,666	\$1,737	\$5,403	\$6,000
Office Supplies	\$919	\$750	\$165	\$38	\$204	\$750
Uniforms	\$2,641	\$3,000	\$1,480	\$1,029	\$2,509	\$3,000
Fire Alarm System	\$3,045	\$4,000	\$1,194	\$853	\$2,046	\$4,000
Rain Bird Pump System	\$28,041	\$27,576	\$16,089	\$11,491	\$27,580	\$27,576
Maintenance Reserve- Transfer Out	\$7,823	\$3,719	\$2,169	\$1,549	\$3,719	\$1,860
Maintenance Reserve- Transfer Out (Excess)	\$189,484	\$0	\$0	\$51,753	\$51,753	\$0

Total Grounds Expenditures	\$461,347	\$289,716	\$180,132	\$152,355	\$332,487	\$282,878
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Total Expenses	\$967,138	\$864,536	\$502,835	\$347,604	\$850,438	\$864,536
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Excess Revenue/(Expenditures)	(\$102,691)	\$0	\$299,715	(\$299,715)	\$0	\$0
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	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Net Assessment- General	\$ 779,212	\$ 779,212	\$ 779,212	\$ 779,212	\$ 779,212
Net Assessment- Recreation	\$ 28,945	\$ 28,945	\$ 28,945	\$ 28,945	\$ 28,945
Total Net Assessments	\$ 808,157	\$ 808,157	\$ 808,157	\$ 808,157	\$ 808,157
Discounts @ 4%	\$ 51,584	\$ 51,584	\$ 51,584	\$ 51,584	\$ 51,584
Gross Assessment	\$ 859,741	\$ 859,741	\$ 859,741	\$ 859,741	\$ 859,741
Assessable Units - Residential	4,222	4,222	4,222	4,222	4,222
Assessable Units - Non-Residential	1,869	1,869	1,869	1,869	1,869
Total Units	6,091	6,091	6,091	6,091	6,091
Assessment per Unit - General Fund	\$ 141	\$ 136	\$ 141	\$ 141	\$ 141
Assessment per Unit - Debt Service	\$ 414	\$ 414	\$ 414	\$ 414	\$ 414
Assessment per Unit - Recreation	\$ 129	\$ 129	\$ 129	\$ 130	\$ 130

Viera East

Community Development District

General Fund Budget

Revenues:

Maintenance Assessments

The District will levy a Non-Ad Valorem Assessment on all the assessable property within the District in order to pay for its operating and maintenance expenditures incurred during the Fiscal Year.

Golf Course Administrative Services

Represents Golf Course Fund portion of salary and benefits for employees paid from the General Fund

Description	Annual Amount
Base	\$ 75,000
10% of Maintenance Supervisor	\$ (7,280)
50% of Labor Position	\$ (11,440)
Total	\$ 56,280

Interest Income

The District will earn interest on balances invested during the year

Administrative Expenditures:

Supervisors Fees

The amount paid to each supervisor for the time devoted to District business and meetings is determined by Chapter 190, Florida Statutes, at \$200 per meeting. Amount is based on five supervisors receiving fees for two meetings per month.

Engineering Fees

The District's engineer, Boyer Singleton, will be providing general engineering services to the District, which includes preparation and attendance of monthly board meetings.

Attorney Fees

Legal Counsel:

Shutts and Bowen LLP

300 South Orange Avenue
Suite 300
Orlando, FL 32801
Telephone: (407) 835-6759
Fax: (407) 849-7288

The District's legal counsel, Shutts and Bowen, will be providing general services, which include attendance and preparation for monthly board meetings. Also, services include reviewing contracts, agreements, resolutions, rule amendments, etc.

Viera East
Community Development District
General Fund Budget

Viera East

Community Development District

General Fund Budget

Dissemination

The District is required by the Security and Exchange Commission to comply with Rule 15c2-12(b)(5), which relates to additional reporting requirements for un-rated bond issues.

- Series 2006 Water Management \$1,000

Trustee Fees

The District will pay annual trustee fees for Water Management Refunding Bonds, Series 2006.

Annual Audit

The District is required to annually have its financial records audited by an independent Certified Public Accounting Firm. The estimated cost of the audit is based on the prior fiscal year and will be shared with the Recreational Fund.

Collection Agent

Fees incurred by GMS-Central Florida, LLC for calculating, levying and certification of the District's Non-Ad valorem Maintenance Assessments with the Brevard County Tax Collector.

Contractor	Services	Monthly	Annual
GMS- Central Florida, LLC Assessments		\$ 208	\$ 2,500

Management Fees

The District has contracted with GMS-Central Florida, LLC to provide Accounting and Administrative Services for the District. The services include, but are not limited to, recording and transcription of board meetings, administrative services, budget preparation, financial reporting, annual audits, etc.

Postage

Mailing of Board Meeting agendas, checks for vendors, overnight deliveries and any other required correspondence. Amount is based on prior years cost.

Printing & Binding

Printing and binding agenda packages for board meetings, printing of computerized checks, District Brochures, correspondence, stationery, envelopes etc.

Insurance- Liability

The District's general liability, public official's liability, and automobile insurance coverage is provided by EGIS Insurance and Risk Advisors.

Description	Admin Amount	Field Amount	Annual Amount
General Liability	\$ 4,282	\$ -	\$ 4,282
POL/EPLI	\$ 3,193	\$ -	\$ 3,193
Auto Physical Damage	\$ -	\$ -	\$ -
Property	\$ -	\$ 1,663	\$ 1,663
Total	\$ 7,475	\$ 1,663	\$ 9,138

Viera East

Community Development District

General Fund Budget

Legal Advertising

Advertising of monthly board meetings, public hearings, and any other legal advertising that may be required.

Other Current Charges

Any miscellaneous expenses incurred by the District that were not previously budgeted.

Office Supplies

Any supplies that may need to be purchased during the Fiscal Year, e.g., paper, minute books, file folders, labels, paper clips, etc.

Dues & Licenses

The District is required to pay an annual fee to the Department of Community Affairs for \$175. This is the only anticipated expenditure for this category.

Information Technology

Costs related to District's accounting and information systems, District's website creation and maintenance, electronic compliance with Florida Statutes and other electronic data requirements.

Operating Expenditures:

Salaries & Wages

The District currently has a General Manager and 1 full time employee to handle the operations of the District. The proposed amount includes a 3% cost of living increase for qualifying employees.

Administration Fee

Represents fee to Paychex for administration of pay and benefits. Paychex charges an administration fee of \$30.98 per full time employee per pay period and \$22.32 per part-time employee per pay period.

FICA

Represents the estimated amount due for Social Security (6.2%) and Medicare (1.45%) based upon the proposed salaries and wages.

Health Insurance

Full time District Employee's are eligible for the following health benefits.

Provider	Policy Number	Insurance Description
United Healthcare	591637	Accidental Death, Dental, Vision, Life, and Long Term Disability
Health First	114619	Health
Colonial Life	E3682663	Life, Accident, Short Term Disability
Combined	007394312	Accident and Disability

Workers Compensation

The District provides Workers Compensation Insurance for each of its employee's based upon statutory requirements and rates determined by Paychex.

Viera East

Community Development District

General Fund Budget

Unemployment

The District pays State and Federal unemployment for each employee based upon current rate structures.

Other Contractual

Miscellaneous fees and contracts incurred for the District.

Description	Annual Amount
ADT Security	\$ 2,352
Ecolab Pest Elimination	\$ 3,937
Xelar Copier	\$ 1,117
Additional Contract Funds	\$ 94
Total Annual Budget	\$ 7,500

Training

Expense involved in providing training for staff.

Uniforms

Expense involved in providing uniforms for the administration staff.

Maintenance Expenditures:

Canal Maintenance

Represents cost associated with the maintenance of the canals located east and west of I-95. The canals east of I-95 are maintained by various contractors paid by the District on an "as needed" basis. The canals west of I-95 are maintained by A. Duda & Sons and billed to the District

Lake Bank Restoration

Allocation of funds dedicated for lake bank restoration throughout the District.

Environmental Services

The District will incur the following costs related to maintaining and managing the various conservation areas (wetlands and uplands), which are the responsibility of the District. The amount is based upon the current contract with Kevin L. Erwin, plus an allowance for additional services from other providers that may be required. Services provided under this budget item may include the following:

Wetland Monitoring Reports as required by SJRWMD and USACOE.
Wetland Maintenance, removal of exotic species as required to conform to permit requirements.

Habitat Management, including burns of preserved areas as required within the approved Habitat Management Plan(s).

Permit Compliance and General Services as required.

Viera East

Community Development District

General Fund Budget

Water Management System

The District currently has a contract with ECOR Industries, Inc. to provide Aquatic Maintenance Service for the District's Lakes.

Description	Monthly Amount	Annual Amount
Natural Areas Management	\$ 3,296	\$ 39,551
Wingate & Auburn Lake Aquatic Weed Control	\$ 664	\$ 7,971
Bayhill Wetland Maintenance (Bi-Monthly)	\$ 200	\$ 1,200
Aquatic Weed Control	\$ 3,407	\$ 40,881
Header Canal Maintenance (Quarterly)	\$ 1,100	\$ 4,440
Unanticipated Repairs/Improvements		\$ 4,957
Total	<u>\$ 8,667</u>	<u>\$ 99,000</u>

Control Burns:

The District anticipates that it will have control burns this year throughout the Scrub Jay Preserve areas. The purpose of the control burns is to enhance the habitat of threatened and endangered species and to reduce the intensity of natural fires.

Contingencies

Any miscellaneous expenses incurred by the District that were not previously budgeted.

Fire Line Maintenance

Expenses related to the maintenance of the various Fire Lines throughout the District. This mainly includes the mechanical removal of vegetation between homeowners' property and conservation areas in order to slow or stop the spread of wildfire.

Basin Repair

Expenses related to the repair and maintenance of the drainage structures at District Basins III, IV, and V. The drainage structures that get repaired are the outfalls (connect lakes) and the flowways (connect lakes to St Johns River).

Grounds Maintenance Expenditures:

Salaries & Wages

The District currently has a 4 full time and 1 part time employee's to handle the grounds maintenance of the District. The proposed amount includes a 3% cost of living increase for qualifying employees.

Administration Fee

Represents fee to Paychex for administration of pay and benefits. Paychex charges an administration fee of \$30.98 per full time employee per pay period and \$22.32 per part-time employee per pay period.

FICA

Represents the estimated amount due for Social Security (6.2%) and Medicare (1.45%) based upon the proposed salaries and wages.

Viera East

Community Development District

General Fund Budget

Health Insurance

Full time District Employee's are eligible for the following health benefits.

Provider	Policy Number	Insurance Description
United Healthcare	591637	Accidental Death, Dental, Vision, Life, and Long Term Disability
Health First	114619	Health
Colonial Life	E3682663	Life, Accident, Short Term Disability
Combined	007394312	Accident and Disability

Workers Compensation

The District provides Workers Compensation Insurance for each of its employee's based upon statutory requirements and rates determined by Paychex.

Unemployment

The District pays State and Federal unemployment for each employee based upon current rate structures.

Telephone

Expenses incurred for the telephone and fax machine.

Vendor	Monthly Amount	Annual Amount
Blueline Telecom Group	\$ 517	\$ 6,204
Contingency		\$ 46
Total		\$ 6,250

Utilities

The District has the following utility account with Florida Power and Light to provide electricity for the maintenance building.

Vendor	Account	Monthly Amount	Annual Amount
FPL	83490-45156	\$ 450	\$ 5,400
Contingency			\$ 100
Total			\$ 5,500

Property Appraiser

Fees incurred for the Brevard County Property Appraiser performing work in support of processing and distributing non-ad valorem assessment information. The cost for the FY2019 year will be \$1,990.

Viera East

Community Development District

General Fund Budget

Insurance- Property

Represents the amount paid for the property portion of the insurance premium with EGIS Insurance and Risk Advisors. The property includes vehicles, equipment, etc.

Description	Admin Amount	Field Amount	Annual Amount
General Liability	\$ 4,282	\$ -	\$ 4,282
POL/EPLI	\$ 3,193	\$ -	\$ 3,193
Auto Physical Damage	\$ -	\$ -	\$ -
Property	\$ -	\$ 1,663	\$ 1,663
Total	\$ 7,475	\$ 1,663	\$ 9,138

Repairs

Any costs related to miscellaneous repairs and maintenance that occur during the fiscal year.

Fuel

Costs related to fuel purchased for grounds maintenance machinery that occur during the fiscal year.

Park Maintenance

Represents cost associated with the maintenance of the parks and trails located within the district.

Sidewalk Repair

Represents cost associated with the repair of the sidewalks located within the district.

Chemicals

Includes fungicide applications, herbicide applications, insecticide applications needed to maintain the grounds.

Contingencies

Represents any miscellaneous expenses incurred by the District that were not previously budgeted.

Refuse

Estimated costs for refuse services to empty dumpster(s) twice monthly by Danny's Recycling & HAU is:

Contractor	Services	Monthly	Annual
Danny's Recycling & HAU	Empty Dumpster	\$ 430	\$ 5,160
	Contingency		\$ 840
Total			\$ 6,000

Office Supplies

Costs for items used in office

Viera East

Community Development District

General Fund Budget

Uniforms

The District is in contract with Unifirst to supply uniforms for the Maintenance staff. Unifirst comes to the District weekly to deliver clean uniforms to the staff.

Vendor	Monthly Amount	Annual Amount
Unifirst	\$ 219	\$ 2,624
Contingency		\$ 376
Total		\$ 3,000

Fire and Burglary Alarm System

The District is in contract with ADT to provide monthly fire and burglary alarm system monitoring and maintenance. The services will be split between the Golf Course and Operations.

Description	Monthly Amount	Annual Amount
System Monitoring	\$ 98	\$ 1,176
Equipment Lease	\$ 233	\$ 2,797
Contingency		\$ 27
Total Annual Budget		\$ 4,000

Rain Bird Pump System

The District will be financing a new pump system for irrigation through Rain Bird.

Vendor	Monthly Amount	Annual Amount
Rain Bird	\$ 2,298	\$ 27,576
Total Annual Budget		\$ 27,576

Maintenance Reserves – Transfer Out

Funds allocated annually to insure available cash for ongoing operations of the District and for major repair or replacement of capital items.

Maintenance Reserves – Transfer Out (PY Excess)

Represents projected excess funds above operating capital requirements in the General Fund.

Viera East
Community Development District
Capital Reserve Fund
Approved Budget
Fiscal Year 2021

Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Revenues

Beginning Fund Balance	\$283,792	\$349,146	\$0	\$349,146	\$295,221
Interest Income	\$2,500	\$2,704	\$2,000	\$4,704	\$2,500
Reserve Funding - Transfer In (General)	\$3,719	\$2,169	\$1,549	\$3,719	\$1,860
Reserve Funding - Transfer In (Golf)	\$7,940	\$13,129	\$0	\$13,129	\$33,612
Reserve Funding - Transfer In (General Excess)	\$0	\$0	\$51,753	\$51,753	\$0

Total Revenues	\$297,950	\$367,148	\$55,303	\$422,451	\$333,192
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Expenditures

Capital Outlay	\$100,000	\$127,231	\$0	\$127,231	\$100,000
Truck Maintenance	\$25,000	\$0	\$0	\$0	\$25,000
Transfer Out	\$0	\$0	\$0	\$0	\$0

Total Expenditures	\$125,000	\$127,231	\$0	\$127,231	\$125,000
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Excess Revenues (Expenditures)	\$172,950	\$239,918	\$55,303	\$295,221	\$208,192
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Viera East
Community Development District
Debt Service Fund
Series 2006
Approved Budget FY2021

Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Revenues

Special Assessments	\$ 2,376,297	\$ 2,307,905	\$ 115,265	\$ 2,423,170	\$ 2,376,297
Interest Income	\$ 1,500	\$ 928	\$ 750	\$ 1,678	\$ 1,500
Beginning Fund Balance	\$ 466,966	\$ 459,368	\$ -	\$ 459,368	\$ 447,905

Total Revenues	\$ 2,844,763	\$ 2,768,200	\$ 116,015	\$ 2,884,216	\$ 2,825,702
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Expenditures

Series 2006

Interest-11/1	\$ 184,719	\$ 184,719	\$ -	\$ 184,719	\$ 126,644
Interest-5/1	\$ 184,719	\$ -	\$ 184,719	\$ 184,719	\$ 126,644
Principal-5/1	\$ 2,020,000	\$ -	\$ 2,020,000	\$ 2,020,000	\$ 2,140,000
Other Debt Service Costs	\$ 46,873	\$ -	\$ 46,873	\$ 46,873	\$ 46,873

Total Expenditures	\$ 2,436,311	\$ 184,719	\$ 2,251,592	\$ 2,436,311	\$ 2,440,161
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**Excess Revenues
(Expenditures)**

\$ 408,453	\$ 2,583,481	\$ (2,135,576)	\$ 447,905	\$ 385,542
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* Excess Revenues needed to pay the 11/1/21 Interest Payment \$ 65,119

	FY 2018	FY 2019	FY 2020	FY 2021
Net Assessments	\$ 2,423,170	\$ 2,423,170	\$ 2,423,170	\$ 2,376,297
Discounts	\$ 96,927	\$ 96,927	\$ 96,927	\$ 95,052
Gross Assessment	\$ 2,520,097	\$ 2,520,097	\$ 2,520,097	\$ 2,471,349
Gross Assessments	\$ 2,520,097	\$ 2,520,097	\$ 2,520,097	\$ 2,520,097
Assessable Units	6,091	6,091	6,091	6,091
Per Unit Assessments	\$ 414	\$ 414	\$ 414	\$ 414

Viera East
Community Development District
Debt Service Fund - Series 2006
Amortization Schedule

Date	Series 2006		Fiscal Total
	Principal	Interest	
11/1/19		\$184,719	\$184,719
5/1/20	\$2,020,000	\$184,719	
11/1/20		\$126,644	\$2,331,363
5/1/21	\$2,140,000	\$126,644	
11/1/21		\$65,119	\$2,331,763
5/1/22	\$2,265,000	\$65,119	\$2,330,119
	\$6,425,000	\$752,963	\$7,177,963

Viera East
Community Development District
 Golf Course
 Approved Operating Budget
 Fiscal Year 2021

Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Number of Rounds

Paid Rounds	37,694	35,250	21,451	12,436	33,887	35,250
Member Rounds	7,120	10,000	5,560	2,730	8,290	10,000
Comp Rounds	3,027	3,000	1,952	1,036	2,988	3,000
EZ Links	3,273	3,000	1,667	938	2,605	3,000
GolfNow	1,518	2,000	1,694	666	2,360	2,000
Total Memberships	70	60	47	13	60	60
<i>Revenue per Round</i>						
Public	\$34	\$35	\$40	\$36	\$38	\$40

Revenues

Greens Fees	\$1,269,343	\$1,460,610	\$850,801	\$448,873	\$1,299,674	\$1,426,357
Gift Cards- Sales	\$11,531	\$25,000	\$5,021	\$2,813	\$7,834	\$25,000
Gift Cards- Usage	(\$15,672)	(\$25,000)	(\$9,634)	(\$5,357)	(\$14,991)	(\$25,000)
Season Advance/Trail Fees	\$202,756	\$210,000	\$128,651	\$74,761	\$203,412	\$210,000
Associate Memberships	\$36,498	\$42,000	\$26,307	\$13,114	\$39,421	\$42,000
Driving Range	\$64,639	\$80,000	\$44,657	\$21,437	\$66,094	\$80,000
Golf Lessons	\$2,100	\$2,100	\$1,225	\$875	\$2,100	\$2,100
Merchandise Sales	\$124,418	\$115,000	\$67,000	\$38,979	\$105,979	\$115,000
Restaurant	\$23,048	\$20,000	\$16,839	\$5,928	\$22,767	\$20,000
Assessments -Recreation Operating	\$22,527	\$22,527	\$13,141	\$9,386	\$22,527	\$22,527
Miscellaneous Income	\$23,473	\$15,000	\$16,813	\$4,308	\$21,121	\$15,000

Total Revenues

\$1,764,662	\$1,967,237	\$1,160,821	\$615,116	\$1,775,938	\$1,932,984
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General Expenditures

Other Contractual Services	\$12,294	\$15,000	\$9,101	\$5,299	\$14,400	\$15,000
Telephone	\$5,267	\$5,500	\$2,069	\$2,419	\$4,488	\$5,500
Postage	\$1,705	\$1,500	\$6,201	\$593	\$6,794	\$2,000
Printing & Binding	\$691	\$1,000	\$0	\$300	\$300	\$1,000
Utilities	\$5,611	\$5,000	\$3,226	\$2,282	\$5,509	\$5,400
Repairs & Maintenance	\$10,143	\$7,000	\$573	\$2,256	\$2,830	\$8,000
Advertising	\$40,453	\$45,000	\$19,510	\$14,731	\$34,241	\$45,000
Bank Charges	\$36,526	\$30,500	\$22,615	\$14,060	\$36,675	\$35,000
Office Supplies	\$5,202	\$4,000	\$2,172	\$1,091	\$3,263	\$4,000
Operating Supplies	\$4,461	\$5,000	\$2,046	\$1,290	\$3,335	\$5,000
Dues, Licenses & Subscriptions	\$8,469	\$8,000	\$5,629	\$2,195	\$7,824	\$8,000
Drug Testing- All departments	\$517	\$200	\$190	\$141	\$331	\$500
Training, Education & Employee Relations	\$3,400	\$3,000	\$2,637	\$315	\$2,952	\$3,000
Contractual Security	\$2,550	\$3,000	\$829	\$1,708	\$2,536	\$3,000
IT Services	\$3,747	\$3,000	\$190	\$812	\$1,002	\$3,000

Total Golf Course Expenditures

\$141,035	\$136,700	\$76,988	\$49,491	\$126,479	\$143,400
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Viera East
Community Development District
 Golf Course
 Approved Operating Budget
 Fiscal Year 2021

Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Restaurant Expenditures

Utilities	\$10,392	\$10,500	\$5,131	\$3,894	\$9,025	\$10,500
Pest Control	\$1,130	\$1,200	\$666	\$476	\$1,141	\$1,200
Equipment Lease	\$1,037	\$1,100	\$684	\$489	\$1,173	\$1,100
Total Restaurant Expenditures	\$12,559	\$12,800	\$6,481	\$4,859	\$11,340	\$12,800

Golf Operations:

Salaries	\$204,709	\$237,500	\$131,399	\$80,375	\$211,774	\$210,900
Administrative Fee	\$18,093	\$17,793	\$11,809	\$7,996	\$19,805	\$19,957
FICA Expense	\$16,014	\$18,781	\$10,040	\$6,001	\$16,041	\$16,547
Health Insurance	\$678	\$707	\$368	\$397	\$765	\$707
Workers Compensation	\$5,730	\$4,812	\$3,628	\$2,142	\$5,770	\$4,239
Unemployment	\$8,862	\$12,786	\$6,035	\$3,524	\$9,558	\$12,786
Golf Printing	\$0	\$2,200	\$1,206	\$804	\$2,010	\$2,200
Utilities	\$22,000	\$22,500	\$11,425	\$8,341	\$19,766	\$22,500
Repairs	\$525	\$250	\$0	\$500	\$500	\$250
Pest Control	\$1,193	\$1,200	\$666	\$476	\$1,141	\$1,200
Supplies	\$13,329	\$8,000	\$10,318	\$3,796	\$14,114	\$10,000
Uniforms	\$530	\$1,500	\$1,862	\$49	\$1,912	\$1,500
Training, Education & Employee Relations	\$26	\$2,000	\$260	\$0	\$260	\$2,000
Fuel	\$0	\$500	\$0	\$0	\$0	\$500
Cart Lease	\$45,599	\$90,753	\$40,284	\$36,140	\$76,424	\$99,000
Cart Maintenance	\$3,653	\$4,000	\$3,482	\$1,253	\$4,735	\$4,000
Driving Range	\$4,488	\$10,000	\$3,428	\$3,591	\$7,019	\$10,000
Total Golf Operation Expenditures	\$345,428	\$435,282	\$236,209	\$155,386	\$391,595	\$418,286

Merchandise Sales:

Cost of Goods Sold	\$85,408	\$77,000	\$44,021	\$30,588	\$74,608	\$77,000
Total Merchandise Sales	\$85,408	\$77,000	\$44,021	\$30,588	\$74,608	\$77,000

Golf Course Maintenance:

Salaries	\$422,350	\$470,000	\$246,766	\$174,016	\$420,782	\$452,632
Administrative Fees	\$10,767	\$11,867	\$6,409	\$4,430	\$10,839	\$11,919
FICA Expense	\$30,495	\$36,060	\$18,215	\$13,090	\$31,305	\$3,756
Employee Insurance	\$45,723	\$58,245	\$26,327	\$13,790	\$40,117	\$49,336
Workers Compensation	\$11,314	\$11,316	\$6,681	\$4,736	\$11,417	\$11,023
Unemployment	\$6,986	\$7,857	\$5,859	\$1,310	\$7,169	\$8,170
Drug Testing	\$0	\$420	\$0	\$0	\$0	\$0
Consulting Fees	\$6,000	\$6,000	\$3,500	\$2,500	\$6,000	\$6,000
Fire Alarm System	\$814	\$4,000	\$1,239	\$158	\$1,397	\$4,000
Telephone/Internet	\$0	\$500	\$0	\$0	\$0	\$0
Utilities/Water	\$27,332	\$26,200	\$14,967	\$10,187	\$25,154	\$26,200

Viera East
Community Development District
 Golf Course
 Approved Operating Budget
 Fiscal Year 2021

	Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
Repairs	\$42,372	\$48,000	\$21,338	\$11,053	\$32,391	\$48,000
Fuel & Oil	\$35,882	\$40,000	\$16,774	\$16,774	\$33,547	\$40,000
Pest Control	\$904	\$1,000	\$789	\$385	\$1,174	\$1,000
Irrigation/Drainage	\$31,852	\$30,000	\$8,391	\$6,362	\$14,753	\$30,000
Sand and Topsoil	\$21,323	\$26,500	\$6,665	\$4,850	\$11,515	\$26,500
Flower/Mulch	\$4,401	\$7,000	\$8,177	\$27	\$8,203	\$7,000
Fertilizer	\$124,424	\$139,000	\$70,020	\$58,385	\$128,405	\$139,000
Seed/Sod	\$12,462	\$16,500	\$6,876	\$1,412	\$8,288	\$16,500
Trash Removal	\$1,917	\$2,000	\$986	\$692	\$1,677	\$2,000
Contingency	\$4,522	\$6,000	\$2,679	\$0	\$2,679	\$6,000
First Aid	\$734	\$600	\$562	\$297	\$859	\$800
Office Supplies	\$854	\$1,000	\$114	\$250	\$364	\$1,000
Operating Supplies	\$5,795	\$17,500	\$2,428	\$1,785	\$4,213	\$15,000
Training	\$1,439	\$500	\$909	\$189	\$1,098	\$1,000
Janitorial Supplies	\$84	\$1,500	\$30	\$500	\$530	\$1,000
Soil & Water Testing	\$0	\$1,000	\$0	\$500	\$500	\$1,000
Uniforms	\$8,446	\$8,500	\$4,861	\$3,327	\$8,188	\$8,500
Equipment Rental	\$414	\$2,500	\$0	\$500	\$500	\$2,000
Equipment Lease	\$161,619	\$163,000	\$102,548	\$67,790	\$170,338	\$165,000
Small Tools	\$0	\$500	\$0	\$500	\$500	\$500
Total Golf Course Maintenance	\$1,021,224	\$1,145,065	\$584,107	\$399,794	\$983,901	\$1,084,836
<u>Administrative Expenditures:</u>						
Legal Fees	\$0	\$1,500	\$1,740	\$0	\$1,740	\$1,500
Arbitrage	\$450	\$600	\$350	\$250	\$600	\$600
Dissemination	\$1,000	\$1,000	\$583	\$417	\$1,000	\$1,000
Trustee Fees	\$4,089	\$4,100	\$2,392	\$1,708	\$4,100	\$4,100
Annual Audit	\$1,340	\$1,500	\$875	\$625	\$1,500	\$1,500
Golf Course Administrative Services	\$56,280	\$56,280	\$32,830	\$23,450	\$56,280	\$56,280
Insurance	\$64,819	\$70,000	\$39,364	\$27,504	\$66,868	\$77,000
Property Taxes	\$13,053	\$10,000	\$8,673	\$7,673	\$16,346	\$15,000
Total Administrative Expenditures	\$141,031	\$144,980	\$86,807	\$61,626	\$148,434	\$156,980
<u>Reserves:</u>						
Renewal & Replacement	\$35,446	\$7,940	\$13,129	\$0	\$13,129	\$33,612
Total Reserves	\$35,446	\$7,940	\$13,129	\$0	\$13,129	\$33,612
Total Revenues	\$1,764,662	\$1,967,237	\$1,160,821	\$615,116	\$1,775,938	\$1,932,984
Total Expenditures	\$1,782,131	\$1,959,767	\$1,047,743	\$701,743	\$1,749,486	\$1,926,914
Operating Income (Loss)	(\$17,469)	\$7,470	\$113,079	(\$86,626)	\$26,452	\$6,070

Viera East
Community Development District
 Golf Course
 Approved Operating Budget
 Fiscal Year 2021

Actual FY 2019	Adopted Budget FY 2020	Actual Thru 4/30/20	Projected Next 5 Months	Total Projected @ 9/30/20	Approved Budget FY 2021
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Non Operating Revenues/(Expenditures):

Assessments -Recreation Debt Service	\$575,695	\$558,355	\$325,707	\$232,648	\$558,355	\$558,355
Interest Income	\$968	\$1,000	\$239	\$150	\$389	\$1,000
Interest Expense	(\$171,638)	(\$156,825)	(\$91,481)	(\$65,344)	(\$156,825)	(\$140,425)
Principal Expense	(\$395,000)	(\$410,000)	(\$239,167)	(\$170,833)	(\$410,000)	(\$425,000)

Total Non Operating Revenues/(Expenditures)	\$10,026	(\$7,470)	(\$4,702)	(\$3,379)	(\$8,081)	(\$6,070)
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Net Non Operating Income / (Loss)	(\$7,444)	\$0	\$108,376	(\$90,006)	\$18,371	\$0
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Viera East

Community Development District

Recreational Operating Budget

Revenues:

Greens Fees

Estimated revenue for public paid rounds of golf.

Gift Card- Sales

Estimated amount of gift cards sold that can be used for discounted rounds of golf, merchandise or restaurant purchases. The full amount of the sale is recorded as revenue at the time of purchase.

Gift Card- Usage

Estimated usage of gift cards once purchased. Once the gift cards have been used at the District, the amount used is recorded against the revenue.

Season Advance/Trail Fees

Estimated revenue of customers who purchase memberships to the District golf course in advance for the year.

Associate Memberships

Estimated costs of all associate memberships sold. The associate membership costs \$79 and lasts for one year. The membership gets the member a 20% discount on golf rounds and other discounts on range balls, apparel, and USGA handicap service.

Driving Range

Estimated revenue from the District's driving range.

Golf Lessons

Estimated revenue from golfing lessons given at the golf course. The District leases the golf instruction program to the Mike Hogan Golf Academy.

Merchandise Sales

Estimated revenue of clothing, equipment, and supplies sold in the District's Pro Shop.

Restaurant

The District's restaurant is leased to Divots Grille, LLC per an agreement with the District and Divots Grille, LLC. The agreement states that Divots Grille, LLC will pay the District six (6%) of gross sales not excluding sales tax through the lease term ending on September 30, 2019.

Description	Annual Amount
Rental Income	\$ 12,000
Other Restaurant Revenue	\$ 8,000
Total	\$ 20,000

Viera East

Community Development District

Recreational Operating Budget

Assessments- Recreation Operations

The District will levy Non-Ad Valorem assessments in all the assessable property within the District to help fund all of the General Operating Expenditures for the fiscal year.

Miscellaneous Income

Estimated annual revenue for various miscellaneous charges billed and collected by the District.

General Expenditures:

Other Contractual Services

Contractual Services include the following contracts:

Vendor	Monthly Amount	Annual Amount
Brighthouse (Cable & Internet)	\$ 350	\$ 4,200
Waste Management (Dumpster Removal)	\$ 338	\$ 4,057
Great America Financial	\$ 93	\$ 1,117
American Safety and First Aide		\$ 500
Crystal High Rise, Inc		\$ 250
Slug A Bug (Termite Renewal)		\$ 325
Contingency		\$ 4,551
Total Annual Budget		\$15,000

Telephone

Represents regular telephone lines, credit card, and Internet access. A portion of expenses related to the District are transferred to General Fund.

Vendor	Monthly Amount	Annual Amount
Greybar Financial Services	\$ 289	\$ 3,469
Cricket	\$ 104	\$ 1,248
Contingency		\$ 783
Total		\$ 5,500

Postage

Mailing payroll checks, checks for vendors, overnight deliveries and any other required correspondence that is directly related to the golf course. A portion of expenses related to the District are transferred to General Fund.

Printing & Binding

Printing of computerized checks, brochures, correspondence, promotional cards, stationary, rack cards, envelopes, etc. A portion of expenses related to the District are transferred to General Fund.

Viera East

Community Development District

Recreational Operating Budget

Utilities

The District has the following utility accounts related to the operations:

Vendor	Account	Monthly Amount	Annual Amount
FPL	10579-42334	\$ 180	\$ 2,160
FPL	91273-57086	\$ 30	\$ 360
City of Cocoa	313093-70192	\$ 125	\$ 1,500
City of Cocoa	150351-141774	\$ 75	\$ 900
Contingency			\$ 480
Total			\$ 5,400

Repairs & Maintenance

Any miscellaneous repairs and maintenance, including electrical, plumbing, hardware, locksmiths, painting and HVAC. A portion of expenses related to the District are transferred to General Fund.

Advertising

Represents advertising for the golf course in the Yellow Pages, newspapers, periodicals, brochures and magazines, rack cards and holders, and promotional organizations. A portion of expenses related to the District are transferred to General Fund.

Bank Charges

Bank charges related to credit card usage, as well as account service charges for the operating checking account fund

Office Supplies

Any office supplies that may need to be purchased during the fiscal year, i.e., paper, minute books, file folders, labels, paper clips, etc.

Operating Supplies

Represents various operating supplies purchased

Viera East

Community Development District

Recreational Operating Budget

Dues, Licenses & Subscriptions

The following represents the estimated cost for license, membership subscriptions and permit renewals for the fiscal year:

Vendor	Description	Annual Amount
City of Rockledge	Business License	\$ 200
Florida State Golf Association	Membership	\$ 150
Florida State Golf Association	Handicap fees	5000
Brevard County	Business Tax License	\$ 82
FL Space	Membership	\$ 805
Cocoa Beach Regional Chapter	Membership	\$ 535
US Golf Association	Membership	\$ 150
Amazon Prime	Membership	\$ 156
GCSAA	Gold Membership	\$ 435
Contingency		\$ 487
Total		\$ 8,000

Training, Education & Employee Relations

Costs incurred in sending District personnel to any training seminars or having personnel trained on site for different aspects to more efficiently and effectively operate the golf course. Also, any expense incurred for staff meetings and help wanted ads.

Contractual Security

Security system costs for the maintenance and clubhouse alarm systems.

IT Services

Costs related to District's accounting and information systems, District's website creation and maintenance, electronic compliance with Florida Statutes and other electronic data requirements.

Restaurant Expenditures:

Utilities

Estimated costs for the basic utilities for the restaurant:

Vendor	Account	Monthly Amount	Annual Amount
FPL	03449-33189	\$ 615	\$ 7,380
City of Cocoa	150351-112664	\$ 250	\$ 3,000
Contingency			\$ 120
Total			\$ 10,500

Viera East

Community Development District

Recreational Operating Budget

Pest Control

The estimated costs for Ecolab Pest Elimination to provide monthly pest control services.

Vendor	Monthly Amount	Annual Amount
Ecolab Pest Elimination	\$ 95	\$ 1,141
Contingency		\$ 59
Total		\$ 1,200

Equipment Lease

The expense related to leasing of a dishwasher in the restaurant.

Vendor	Monthly Amount	Annual Amount
Ecolab	\$ 88	\$ 1,054
Contingency		\$ 46
Total		\$ 1,100

Golf Operations Expenditures:

Salaries & Wages

The District currently has a 1 full time and 30 part time employees to handle the Golf operations of the District. The proposed amount includes a 3% cost of living increase for qualifying employees.

Administration Fee

Represents fee to Paychex for administration of pay and benefits. Paychex charges an administration fee of \$30.98 per full time employee per pay period and \$22.32 per part-time employee per pay period.

FICA

Represents the estimated amount due for Social Security (6.2%) and Medicare (1.45%) based upon the proposed salaries and wages.

Health Insurance

Full time District Employee's are eligible for the following health benefits.

Provider	Policy Number	Insurance Description
United Healthcare	591637	Accidental Death, Dental, Vision, Life, and Long Term Disability
Health First	114619	Health
Colonial Life	E3682663	Life, Accident, Short Term Disability
Combined	007394312	Accident and Disability

Workers Compensation

The District provides Workers Compensation Insurance for each of its employee's based upon statutory requirements and rates determined by Paychex.

Viera East

Community Development District

Recreational Operating Budget

Unemployment

The District pays State and Federal unemployment for each employee based upon current rate structures.

Golf Printing

Printing for materials needed for the course.

Utilities

Estimated cost of basic utilities for Golf operations:

Vendor	Account	Monthly Amount	Annual Amount
FPL	03449-33189	\$ 585	\$ 7,020
FPL	07938-52104	\$ 925	\$ 11,100
City of Cocoa	150351-112664	\$ 100	\$ 1,200
Banleaco		\$ 202	\$ 2,421
Contingency			\$ 759
Total			\$ 22,500

Repairs

Any costs related to miscellaneous repairs and maintenance that occur during the fiscal year.

Pest Control

The estimated costs for Ecolab Pest Elimination to provide monthly pest control services.

Vendor	Monthly Amount	Annual Amount
Ecolab Pest Elimination	\$ 95	\$ 1,141
Contingency		\$ 59
Total		\$ 1,200

Supplies

Estimated costs of miscellaneous supplies that the District may need to purchase for golf operations.

Uniforms

The estimated costs of uniforms for pro shop personnel. Once hired, all employees get a District golf shirt to wear during work hours.

Training, Education & Employee Relations

The District will incur the cost of the Assistant Pro Program and any training deemed necessary for the Pro Shop staff or cart facility personnel, for example, cart mechanics training and any help wanted ads.

Fuel

Costs for gasoline for all golf carts from Glover Oil Company.

Viera East

Community Development District

Recreational Operating Budget

Cart Lease

The expense related to leasing of carts for golf course.

Vendor	Monthly Amount	Annual Amount
TCF Equipment Finance	\$ 6,553	\$ 78,635
TCF Equipment Finance	\$ 242	\$ 2,909
Marlin Business Bank	\$ 236	\$ 2,829
GPS System	\$ 936	\$ 11,232
Yamaha Lease	\$ 164	\$ 1,968
Golf Cart	\$ 97	\$ 1,164
Contingency		\$ 263
Total		\$ 99,000

Cart Maintenance

The expense related to any repairs and maintenance of the golf carts that are incurred during the year.

Driving Range Supplies

Any expenses incurred related to the driving range operation, for example range balls, tokens, buckets, bag stands, clock rope and sand/water buckets.

Merchandise Sales

Cost of Goods Sold

Represents cost of clothing, equipment, and supplies sold in the Pro Shop.

Golf Course Maintenance:

Salaries & Wages

The District currently has 10 full-time and 4 part-time employee's to handle the golf course maintenance. The proposed amount includes a 3% cost of living increase for qualifying employees.

Administration Fee

Represents fee to Paychex for administration of pay and benefits. Paychex charges an administration fee of \$30.98 per full time employee per pay period and \$22.32 per part-time employee per pay period.

FICA

Represents the estimated amount due for Social Security (6.2%) and Medicare (1.45%) based upon the proposed salaries and wages.

Viera East

Community Development District

Recreational Operating Budget

Health Insurance

Full time District Employee's are eligible for the following health benefits.

Provider	Policy Number	Insurance Description
United Healthcare	591637	Accidental Death, Dental, Vision, Life, and Long Term Disability
Health First	114619	Health
Colonial Life	E3682663	Life, Accident, Short Term Disability
Combined	007394312	Accident and Disability

Workers Compensation

The District provides Workers Compensation Insurance for each of its employee's based upon statutory requirements and rates determined by Paychex.

Unemployment

The District pays State and Federal unemployment for each employee based upon current rate structures.

Consulting Fees

The District is contracted with Thomas Trammell to give consulting advise on the golf course. Mr. Trammell goes to the District once a month to give the staff a detailed report on the golf course and suggests ways to improve it.

Vendor	Monthly Amount	Annual Amount
Thomas Trammell	\$ 500	\$ 6,000

Fire and Burglary Alarm System

The District is in contract with ADT to provide monthly fire and burglary alarm system monitoring and maintenance. The services will be split between the Golf Course and Operations.

Description	Monthly Amount	Annual Amount
System Monitoring	\$ 98	\$ 1,176
Equipment Lease	\$ 233	\$ 2,797
Contingency		\$ 27
Total Annual Budget		\$ 4,000

Utilities/Water

Estimated costs of basic utilities for the maintenance staff:

Vendor	Account	Monthly Amount	Annual Amount
FPL	83490-45156	\$ 1,750	\$ 21,000
City of Cocoa	313093-70192	\$ 350	\$ 4,200
Contingency			\$ 1,000
Total			\$ 26,200

Viera East

Community Development District

Recreational Operating Budget

Fuel & Oil

Costs related to fuel purchased for maintenance machinery that occur during the fiscal year.

Pest Control

The estimated costs for Ecolab Pest Elimination to provide monthly pest control services.

Vendor	Monthly Amount	Annual Amount
Ecolab Pest Elimination	\$ 77	\$ 924
Contingency		\$ 76
Total		\$ 1,000

Irrigation/Drainage

Estimated irrigation and drainage maintenance expenditures that may occur during the fiscal year.

Sand/Topsoil

Cost related to sand and topsoil expenditures that may occur during the fiscal year. The District buys all supplies from Golf Specialties, Inc. Some supplies may include top-dress sand, divot sand, and shell rock for the golf course.

Flowers/Mulch

Estimated cost of flowers and mulch for the golf course and clubhouse.

Chemicals/Fertilizer

Estimated costs of fertilizer, herbicide, insecticide, fungicide and other chemicals needed for the golf course.

Seed/Sod

Cost of seed and sod expenditures for the golf course that may occur during the fiscal year.

Trash Removal

Estimated costs for trash removal services to empty dumpster(s) once a month by Waste Management at the golf course:

Vendor	Monthly Amount	Annual Amount
Waste Management, Inc.	\$ 131	\$ 1,575
Contingency		\$ 425
Total		\$ 2,000

Contingencies

Funding of unanticipated costs.

Viera East

Community Development District

Recreational Operating Budget

First Aid

Cost of work gloves, ear plugs, support belts, and other first aid supplies needed during the fiscal year.

Office Supplies

Any office supplies that may need to be purchased during the fiscal year, i.e., paper, minute books, file folders, labels, paper clips, etc.

Operating Supplies

Represents various operating supplies purchased

Training

Training seminars for golf course maintenance staff.

Janitorial Supplies

Costs of janitorial supplies that may occur during the fiscal year.

Soil & Water Testing

Costs for soil and water testing that may occur during the fiscal year.

Uniforms

The District is in contract with Unifirst to supply uniforms for the Golf Course Maintenance staff. Unifirst comes to the District weekly to deliver clean uniforms to the staff.

Vendor	Monthly Amount	Annual Amount
Unifirst	\$ 700	\$ 8,400
Contingency		\$ 100
Total		\$ 8,500

Equipment Rental

Rental of larger capital items required for Course Maintenance.

Viera East

Community Development District

Recreational Operating Budget

Equipment Lease

The District currently has the following equipment leases for the golf course:

Vendor	Monthly Amount	Annual Amount
DLL Finance LLC	\$ 5,168	\$ 62,013
TCF Equipment Finance	\$ 1,066	\$ 12,792
TCF Equipment Finance	\$ 5,116	\$ 61,392
TCF Equipment Finance	\$ 420	\$ 5,036
TCF Equipment Finance	\$ 372	\$ 4,470
TCF Equipment Finance	\$ 652	\$ 7,828
TCF Equipment Finance	\$ 431	\$ 5,168
TCF Equipment Finance	\$ 248	\$ 2,976
Dex Imaging	\$ 115	\$ 1,380
Contingency		\$ 1,947
Total		<u>\$ 165,000</u>

Small Tools

Represents small tools purchased for golf course maintenance.

Administrative Expenditures:

Legal Fees

The District's attorney will be providing general legal services to the District that are directly related to operations of the golf course, i.e., reviewing contracts, agreements, resolutions, rule amendments, etc.

Arbitrage

The District will contract with an Independent certified public accounting firm to annually calculate the District's Arbitrage Rebate Liability on Special Assessments Revenue Bonds.

Dissemination

The District is required by the Security and Exchange Commission to comply with Rule 15c212(b)(5), which relates to additional reporting requirements for un-rated bond issues.

Trustee Fees

The District issued Special Revenue Assessment Refunding Bonds, Series 2012 bonds that are deposited with a Trustee at U.S Bank.

Annual Audit

The District is required to annually have its financial records audited by an independent Certified Public Accounting Firm.

Viera East

Community Development District

Recreational Operating Budget

Golf Course Administrative Services

Cost of Administrative services provided for the CDD.

Description	Annual Amount
Base	\$ 75,000
10% of Maintenance Supervisor	\$ (7,280)
50% of Labor Position	\$ (11,440)
Total	\$ 56,280

Insurance

EGIS Insurance and Risk Advisors provide the District's general liability, property, and crime insurance coverage. EGIS Insurance and Risk Advisors also provide a three year pollution policy.

Description	Annual Amount
General Liability	\$ 22,773
Property	\$ 49,803
Crime	\$ 1,122
Pollution Policy	\$ 2,400
Equipment Insurance	\$ 486
Contingency	\$ 416
Total	\$ 77,000

Property Taxes

This amount is an estimate of property taxes that will need to be paid throughout this fiscal year.

Reserves

Renewal & Replacement

The golf course transfers 2% of its monthly revenues to the Capital Reserve Fund to help fund for equipment replacement and other capital expenditures estimated for the fiscal year.

Viera East
Community Development District
Recreation Fund Debt Service - Series 2012
Amortization Schedule

Date	Bond Balance	Interest	Principal	Interest	Fiscal Year Total
11/01/19	3,305,000			\$ 78,412.50	\$ 559,231.25
05/01/20	3,305,000	4.375%	\$410,000	\$ 78,412.50	
11/01/20	2,895,000			\$ 70,212.50	\$ 558,625.00
05/01/21	2,895,000	4.625%	\$425,000	\$ 70,212.50	
11/01/21	2,470,000			\$ 60,915.63	\$ 556,128.13
05/01/22	2,470,000	5.000%	\$445,000	\$ 60,915.63	
11/01/22	2,025,000			\$ 50,625.00	\$ 556,540.63
05/01/23	2,025,000	5.000%	\$470,000	\$ 50,625.00	
11/01/23	1,555,000			\$ 38,875.00	\$ 559,500.00
05/01/24	1,555,000	5.000%	\$490,000	\$ 38,875.00	
11/01/24	1,065,000			\$ 26,625.00	\$ 555,500.00
05/01/25	1,065,000	5.000%	\$520,000	\$ 26,625.00	
11/01/25	545,000			\$ 13,625.00	\$ 560,250.00
05/01/26	545,000	5.000%	\$545,000	\$ 13,625.00	\$ 558,625.00
			\$3,305,000	\$ 678,581.26	\$ 4,464,400.01

Willow Creek

Community Development District

5385 N. Nob Hill Road, Sunrise, and Florida 33351 • (954) 721-8681 ~ Fax: (954) 721-9202

June 5, 2020

Mr. Stockton Whitten
Brevard County Manager
County Manager's Office
2725 Judge Fran Jamieson Way
Building C
Viera, FL 32940

RECEIVED

JUN 22 2020

County Manager's
Office

Ms. Wanda Wells
Titusville City Clerk
555 South Washington Avenue
Titusville, FL 32796

RECEIVED

JUN 25 2020

BUDGET OFFICE

Re: Willow Creek Community Development District
Proposed Budget Fiscal Year 2021

Dear Mr. Whitten and Ms. Wells,

In accordance with chapter 190.008 (2) (b), Florida Statutes, enclosed please find one copy of the District's proposed budget for Fiscal Year 2021 for purposes of disclosure and information only. The District will schedule a public hearing no less than 60 days from the date of this letter for adoption of the same.

Should you have any questions regarding the enclosed, please feel free to contact me.

Sincerely,



Tiziana Cessna
District Accountant

Enclosure

***Approved Budget
Fiscal Year 2021***

***Willow Creek
Community Development District***

June 5, 2020



Willow Creek

Community Development District

TABLE OF CONTENTS

General Fund

Budget

Narrative

Page 1

Page 2-3

Willow Creek

Community Development District

General Fund

Description	Adopted Budget FY 2020	Actual Thru 4/30/2020	Projected for 5 months	Total Projected 9/30/2020	Proposed Budget FY 2021
Revenues					
Developer Contributions	\$33,329	\$15,970	\$6,079	\$22,049	\$34,167
Total Revenues	\$33,329	\$15,970	\$6,079	\$22,049	\$34,167
Expenditures					
<u>Administrative</u>					
Supervisor Fees	\$2,400	\$600	\$800	\$1,400	\$2,400
Fica Expenditures	\$184	\$46	\$61	\$107	\$184
Engineering Fees	\$2,000	\$0	\$0	\$0	\$2,000
Attorney Fees	\$5,000	\$1,596	\$1,000	\$2,596	\$5,000
Annual Audit	\$2,500	\$2,500	\$0	\$2,500	\$2,600
Management Fees	\$10,000	\$3,500	\$2,500	\$6,000	\$10,000
Website Compliance	\$1,000	\$583	\$417	\$1,000	\$1,000
Telephone	\$25	\$6	\$19	\$25	\$25
Postage	\$300	\$61	\$239	\$300	\$300
Insurance	\$6,325	\$5,894	\$0	\$5,894	\$6,483
Printing & Binding	\$450	\$182	\$268	\$450	\$450
Legal Advertising	\$2,500	\$203	\$500	\$703	\$2,500
Other Current Charges	\$420	\$608	\$240	\$848	\$1,000
Office Supplies	\$50	\$16	\$34	\$50	\$50
Dues, Licenses & Subscriptions	\$175	\$175	\$0	\$175	\$175
Total Administrative	\$33,329	\$15,970	\$6,079	\$22,049	\$34,167
Excess Revenues/(Expenditures)	\$0	(\$0)	\$0	(\$0)	\$0

REVENUES:

Developer Contributions

The District entered into a funding agreement with the developer to fund all general operating expenditures for the Fiscal Year.

EXPENDITURES:

Administrative:

Supervisor Fees

The Florida Statutes allows each board member to receive \$200 per meeting no to exceed \$4,800 in one year. The amount for the fiscal year is based upon all four supervisors attending the estimated 3 annual meetings.

FICA Expenditures

Represents the Employer's share of Social Security and Medicare taxes withheld from Board of Supervisors checks.

Engineering Fees

The District's engineer will be providing general engineering services to the District including attendance and preparation for board meetings, etc.

Attorney Fees

The District's legal counsel will be providing general legal services to the District, i.e., attendance and preparation for monthly meetings, review operating and maintenance contracts, etc.

Annual Audit

The District is required annually to conduct an audit of its financial records by an Independent Certified Public Accounting Firm.

Management Fees

The District receives Management, Accounting and Administrative services as part of a Management Agreement with Governmental Management Services. These services are further outlined in Exhibit "A" of the Management Agreement.

Website Compliance

Per section 189.069 F.S, all Districts must have a website by October 1, 2015 to provide detailed information on the CDD as well as links to useful websites regarding Compliance issues. This website will be maintained by GMS-SF, LLC and updated as required by the statute.

Telephone

Telephone and fax machine.

Postage

Mailing of agenda packages, overnight deliveries, correspondence, etc.

Willow Creek

Community Development District

General Fund

Administrative: (continued)

Insurance

The District's General Liability & Public Officials Liability Insurance policy is with Florida Insurance Alliance. Florida Insurance Alliance specializes in providing insurance coverage to governmental agencies.

Printing & Binding

Printing and Binding agenda packages for board meetings, printing of computerized checks, stationary, envelopes etc.

Legal Advertising

The District is required to advertise various notices for monthly Board meetings, public hearings, etc. in a newspaper of general circulation.

Other Current Charges

Bank charges and any other miscellaneous expenses that are incurred during the year.

Office Supplies

Miscellaneous office supplies.

Dues, Licenses & Subscriptions

The District is required to pay an annual fee to the Department of Economic Opportunity for \$175. This is the only expense under this category for the District.

Viera Stewardship District

313 Campus Street, Celebration, FL 34747, 321-939-4301

www.VieraStewardshipDistrict.org

RECEIVED

JUN 29 2020

County Manager's
Office

June 24, 2020

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

ATTN: Frank Abbate

County Manager

2725 Judge Fran Jamieson Way

Building C

Viera, FL 32940

**RE: Viera Stewardship District
Proposed Budget Fiscal Year 2021**

Dear Mr. Abbate:

In accordance with Section 190.008(2)(b), Florida Statutes, enclosed please find one copy of the District's proposed budget for Fiscal Year 2021 for purposes of disclosure and information only.

The District has scheduled a public hearing for Wednesday, August 26, 2020, at 9:30 a.m. at the Viera Builders Design Studio, 7350 Shoppes Drive, Viera, FL 32940, for adoption of same.

If you have any questions regarding the enclosed, please feel free to contact me.

Sincerely,



Brenda Burgess
Office Manager

Enclosure

**Viera Stewardship District
General Fund Budget
Fiscal Year 2021**

	Actuals for Fiscal Year 2019	Amended Fiscal Year 2020 Budget	Year-To-Date Budget May 31	Year-To-Date Actuals May 31	Projected Actuals for Fiscal Year 2020	Proposed Fiscal Year 2021 Budget
REVENUES						
Special Assessments – Direct Collected	\$184,563.80	\$84,189.23	\$84,189.23	\$84,189.23	\$84,189.23	\$111,539.72
Special Assessments – Tax Collector	\$197,603.24	\$380,221.17	\$380,221.17	\$379,273.37	\$380,221.17	\$393,032.65
Special Assessments – Discounts	-\$7,299.73	-\$15,208.84	-\$15,208.84	-\$14,445.82	-\$15,208.84	-\$15,721.29
Interest Income	\$429.41	\$400.00	\$266.67	\$291.48	\$319.90	\$400.00
Other financing sources	\$0.00	\$0.00	\$0.00	\$0.00	\$35,141.61	\$40,423.87
Use of Fund Balance	\$0.00	\$171,300.44	\$114,200.29	-\$11,454.68	\$126,889.89	\$81,020.30
Total Revenues	\$375,296.72	\$620,902.00	\$563,868.52	\$437,853.58	\$611,552.96	\$610,695.25
EXPENDITURES						
<i>Administrative</i>						
Annual Audit	\$3,200.00	\$3,500.00	\$2,333.33	\$0.00	\$3,200.00	\$3,600.00
Capital Outlay	\$0.00	\$100.00	\$66.67	\$0.00	\$0.00	\$100.00
Contingency	\$177.99	\$300.00	\$200.00	\$0.00	\$200.00	\$200.00
Dues, Licenses, and Subscriptions	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00
FICA and Payroll Taxes	\$45.90	\$99.20	\$66.13	\$15.30	\$45.90	\$99.20
Insurance	\$11,263.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$12,000.00
Legal Advertising	\$3,321.88	\$3,000.00	\$2,000.00	\$5,575.92	\$6,500.00	\$3,000.00
Office Supplies	\$0.00	\$100.00	\$66.67	\$0.00	\$100.00	\$100.00
Other Current Charges	\$0.00	\$200.00	\$133.33	\$0.00	\$150.00	\$200.00
Postage	\$83.74	\$185.00	\$123.33	\$161.23	\$170.00	\$250.00
Printing & Binding	\$20.48	\$100.00	\$66.67	\$0.00	\$100.00	\$100.00
Professional Fees – Attorney	\$23,990.79	\$30,000.00	\$20,000.00	\$9,116.76	\$25,000.00	\$30,000.00
Professional Fees – Ecologist	\$10,486.49	\$10,000.00	\$6,666.67	\$6,887.90	\$10,000.00	\$10,000.00
Professional Fees – Engineer	\$1,916.77	\$12,350.00	\$8,233.33	\$1,043.27	\$9,000.00	\$10,000.00
Professional Fees – Manager	\$33,802.21	\$33,802.21	\$22,534.81	\$20,000.00	\$31,974.68	\$51,930.33
Professional Fees – Property Appraiser	\$711.00	\$1,400.00	\$1,400.00	\$1,391.50	\$711.00	\$1,430.00
Professional Fees – Tax Collector	\$3,112.63	\$7,604.41	\$7,604.41	\$7,297.93	\$3,112.63	\$7,860.65
Supervisor Fees	\$600.00	\$1,600.00	\$1,066.67	\$200.00	\$600.00	\$1,600.00
Telephone	\$0.00	\$100.00	\$66.67	\$0.00	\$100.00	\$100.00
Website	\$2,695.87	\$8,000.00	\$5,333.33	\$17.99	\$5,000.00	\$3,500.00
Total Administrative Expenditures	\$95,603.75	\$122,615.82	\$88,137.02	\$81,882.80	\$106,139.21	\$136,245.18
<i>Maintenance – Platted Lots/Subdivisions</i>						
Aquatic Weed Control for Drainage System	\$60,445.00	\$131,060.00	\$87,373.33	\$67,480.00	\$131,060.00	\$135,380.00
PCT Area Maintenance	\$5,320.00	\$24,808.60	\$16,539.07	\$4,455.00	\$10,000.00	\$5,000.00
Street Lighting	\$52,713.40	\$64,915.58	\$43,277.05	\$38,729.96	\$64,729.96	\$75,302.07
Subdivision Contingency	\$0.00	\$3,000.00	\$2,000.00	\$0.00	\$0.00	\$3,000.00
Total Subdivision Maintenance Expenditures	\$118,478.40	\$223,784.18	\$149,189.45	\$110,664.96	\$205,789.96	\$218,682.07
<i>Maintenance – Environmental (District-wide)</i>						
Aquatic Weed Control and Maintenance for Canals	\$111,702.00	\$136,002.00	\$90,668.00	\$128,320.00	\$136,002.00	\$126,268.00
Monitoring and Miscellaneous Work by Ecologist	\$6,967.59	\$10,000.00	\$6,666.67	\$670.00	\$10,000.00	\$10,000.00
Wetland/Habitat Maintenance in VWP, Stage 1	\$29,995.32	\$12,500.00	\$8,333.33	\$16,480.18	\$16,480.18	\$6,000.00
Wetland/Habitat Maintenance in VWP, Stage 2	\$0.00	\$98,000.00	\$65,333.33	\$44,779.11	\$98,000.00	\$100,000.00
Burrowing Owl Preserve and Bald Eagle CE	\$6,000.00	\$14,000.00	\$9,333.33	\$0.00	\$5,000.00	\$9,500.00
District-wide Contingency	\$2,907.50	\$4,000.00	\$2,666.67	\$0.00	\$0.00	\$4,000.00
Total Environmental Maintenance Expenditures	\$157,572.41	\$274,502.00	\$183,001.33	\$190,249.29	\$265,482.18	\$255,768.00
Total Expenditures	\$371,654.56	\$620,902.00	\$420,327.81	\$362,797.05	\$577,411.35	\$610,695.25
Excess Revenues (Expenditures)	\$3,642.16	\$0.00	\$143,340.72	\$75,056.53	\$34,141.61	\$0.00

Fiscal Year 2021 Revenue and Assessment Summary

	Number of acres	Number of lots	Proposed 2021 O&M assessment (per unit)	Total Assessment Revenue	Totals on Assessment Roll or Direct Collect
Platted lots tax collector, residential		2,718.00	\$135.40	\$368,017.20	\$368,017.20
Platted lots tax collector, commercial	43.41	6.00	\$576.26	\$25,015.45	\$25,015.45
Platted lots direct collect	-	103	\$135.40	\$13,946.20	\$13,946.20
Total lots		2,761.41			
Undeveloped direct collect	7,215.68		\$13.5252	\$97,593.52	\$97,593.52
Totals		9,977.09			\$504,572.36
less discounts					-\$15,721.29
plus interest income					\$400.00
plus other financing sources					\$40,423.87
plus transfer in fund balance					\$81,020.30
Total anticipated revenue					\$610,695.25

VIERA STEWARDSHIP DISTRICT

General Fund Budget

Proposed Budget for Fiscal Year 2021

Line Item Narrative

REVENUES:

Special Assessments – District Collected: The District will direct bill and collect non-ad valorem assessments on undeveloped property within the District and certain platted lots that may not be part of the property appraiser's records that are certified to the District at the time the budget is adopted.

Special Assessments – Tax Collector: The District will levy non-ad valorem assessments on all platted property within the District that will appear on the real estate tax bill to be collected by the Brevard County Tax Collector.

Special Assessments – Discounts: Pursuant to Section 197.162, Florida Statutes, discounts are allowed for early payments. The budgeted amount for the fiscal year is calculated at 4% of the anticipated non-ad valorem assessments.

Interest Income: The District earns interest on non-ad valorem assessments levied on the real estate tax bills that are paid after the due date. The anticipated budget amount is based on previous fiscal years.

Other Financing Sources: The District receives cost-sharing funds from Central Viera Community Association contributing 26.51% and Viera East Community Development District contributing 10% for the previous fiscal year's canal maintenance services performed by A. Duda & Sons, pursuant to the Master Service Agreement for Canal Maintenance dated July 26, 2019.

Use of Fund Balance: The District may transfer carryforward surplus to the fiscal year budget to keep from increasing non-ad valorem assessments.

EXPENDITURES:

Administrative

Annual Audit: The District is required to conduct an annual audit of its financial records by an independent certified public accounting firm. The fee is based on costs provided in the engagement letter. Berger, Toombs, Elam, Gaines & Frank serves as the District's auditing firm.

Capital Outlay: This category includes larger items not included in office supplies, such as a filing cabinet to hold District records.

Contingency: This category includes miscellaneous administrative expenses that may be incurred throughout the year, such as accounting and payroll software.

Dues, Licenses, and Subscriptions: The District is required to pay an annual fee of \$175 to the Department of Economic Opportunity. This is the only expense under this category.

FICA and Payroll Taxes: These represent the employer's payroll taxes on Supervisor fees because the IRS considers Supervisors to be employees of the District. The amount budgeted contemplates two Supervisors being compensated for four meetings.

Insurance: The District will obtain General Liability and Public Officials liability insurance, including worker's compensation, from Egis Insurance and Risk Advisors, which provides coverage for Board

VIERA STEWARDSHIP DISTRICT

General Fund Budget

Proposed Budget for Fiscal Year 2021

members and staff operating in the course of their roles serving the District. The budgeted amount is based on the previous year's premium.

Legal Advertising: The District is required to advertise various notices, including the annual meeting schedule, Board meetings and workshops, public hearings, requests for proposals, and other notices in a newspaper of general circulation within the County. The District advertises in the Florida Today.

Office Supplies: Miscellaneous office supplies include the purchase of file folders, binders, envelopes and other items necessary to provide services on behalf of the District.

Other current charges: This represents any bank fees or miscellaneous charges incurred during the year.

Postage: This includes mailing agenda packages, any overnight or expedited deliveries, and all correspondence on behalf of the District, including invoices and payments to vendors, as well as charges from the property appraiser for mailing the real estate tax bills.

Printing & Binding: This includes the costs associated with printing and binding agenda packages, printing checks, stationery and other printed materials for the District.

Professional Fees – Attorney: The District's legal counsel will be providing general legal services to the District, i.e., attending and preparing for Board meetings, reviewing operation and maintenance contracts, and other work performed at the direction of the Board. Hopping Green & Sams serves as legal counsel.

Professional Fees – Ecologist: The District is required, pursuant to the Development Order, to retain and fund an independent environmental biologist or ecologist as a member of the District's staff, to provide independent scientific advice and recommendations regarding scientific issues that relate to the implementation of the Habitat Management Plan and the achievement of the goals and objectives of the Habitat Management Plan within the Viera Wilderness Park. Zev Cohen & Associates serves as the environmental professional.

Professional Fees – Engineer: The District's Engineer will be providing general engineering services to the District, i.e., attending and preparing for Board meetings, reviewing invoices and construction requisitions, and other work performed at the direction of the Board. B.S.E. Consultants serves as the engineer.

Professional Fees – Manager: The District receives management, accounting, assessment, and administrative services as part of a management agreement with Moyer Management Group. These services are outlined in Exhibit A of the management agreement. The fees are outlined in Exhibit B of the management agreement.

Professional Fees – Property Appraiser: The District has an agreement with the Brevard County Property Appraiser to place its non-ad valorem assessments on the County tax roll. The anticipated budget amount is based on \$.50 per lot for all property records they maintain.

Professional Fees – Tax Collector: The District has an agreement with the Brevard County Tax Collector who collects the District's non-ad valorem assessments on the County tax roll. The budget amount is based on 2% of gross non-ad valorem assessments from the previous fiscal year.

Supervisor Fees: Chapter 190, Florida Statutes, provides compensation for members of the Board of Supervisors for meeting attendance, in the amount of \$200.00 per meeting, not to exceed \$4,800.00 per fiscal year. The amount budgeted contemplates two Supervisors being compensated for four meetings.

VIERA STEWARDSHIP DISTRICT

General Fund Budget

Proposed Budget for Fiscal Year 2021

Telephone: In the course of District activities, long-distance charges and facsimile fees may be incurred.

Website: This line item is for costs associated with the District's website, including annual domain name renewal and hosting, and quarterly auditing and monthly maintenance.

Maintenance – Platted Lots/Subdivisions

Aquatic Weed Control for the Drainage System: The District has a contract with Ecor Industries for maintenance of stormwater lakes for aquatic weed and hydrilla control, and inspections. No other maintenance or repairs are anticipated for fiscal year 2020.

- Monthly fees of \$10,000.00 for 72 current ponds, or \$120,000.00.
- Bi-monthly fees of \$130.00 for natural area in Loren Cove South Phase 1, or \$780.00.
- Quarterly fees of \$1,400.00 for the natural area in Adelaide northwest corner, or \$5,600.00.
- Anticipated monthly fees of \$750.00 for anticipated ponds coming online within the fiscal year, or \$9,000.00.
- TOTAL: \$135,380.00

PCT Area Maintenance: Hand trimming and thinning will be performed by Tropic-Care of Florida on the Preferred Cover-type Tree canopy area, at a monthly cost, plus unscheduled maintenance, for \$5,000.00 annually.

Street Lighting: The District leases street lights from Florida Power & Light. Monthly lease and electrical costs are based on historical figures and estimated for future development to be complete within the fiscal year, for \$75,302.07 annually.

Subdivision Contingency: This category includes any unforeseen maintenance or expenses within platted lots not listed above that may be incurred within the fiscal year. The subdivision contingency is anticipated to be \$3,000.00.

Maintenance – Environmental (District-wide)

Aquatic Weed Control and Maintenance for Canals: The community canals require aquatic weed control (herbicide applications and mechanical cleaning) and mowing, as well as any unscheduled or emergency repairs to the community canals.

- Aquatic weed control of the canals provided by Ecor Industries on a quarterly basis at a fee of \$1,075.00 per quarter, or \$4,300.00 annually.
- Quarterly mowing of the community canal in Strom Park provided by Tropic-Care of Florida at a fee of \$2,700.00 per quarter, or \$10,800.00 annually.
- Quarterly mowing of the Adelaide north canal provided by Tropic-Care of Florida at a fee of \$2,600.00 per quarter, or \$10,400.00 annually.
- Canal maintenance provided by A. Duda & Sons in the estimated amount of \$98,268.00.
- Contingency of \$2,500.00 for erosion, emergency repairs, and other mowing as needed.
- TOTAL: \$126,268.00

Monitoring and Miscellaneous Work by Ecologist: The District's Ecologist will perform the first annual monitoring event, and compile/submit a monitoring report to the U.S. Army Corps of Engineers for Viera Wilderness Park (VWP) Stage 2 mitigation area, and perform various inspections of Villages 1 and 2 PCT management areas, and other miscellaneous work at an estimated cost of \$10,000.00.

VIERA STEWARDSHIP DISTRICT

General Fund Budget

Proposed Budget for Fiscal Year 2021

Wetland/Habitat Maintenance in Viera Wilderness Park (VWP), Stage 1: Maintenance of the Viera Wilderness Park is prescribed in the Annual Utilization Program (AUP) and consists of the following:

- Targeted spraying in the conservation district at a cost of \$6,000.00.
- TOTAL: \$6,000.00

Wetland/Habitat Maintenance in Viera Wilderness Park (VWP), Stage 2: Maintenance of the Viera Wilderness Park is prescribed in the Annual Utilization Program (AUP) and consists of the following items:

- Mechanical removal of Brazilian pepper in VWP Stage 2 (rural district and conservation district) at a cost of \$2,500.00 per week for 30 weeks, or \$75,000.00.
- Mowing/mulching and tractor spraying for cogon grass in the conservation district and the rural district at a cost of \$4,500.00 for two weeks, or \$9,000.00.
- Targeted spraying in the fall with a ground crew of mitigation areas in the conservation district at a cost of \$16,000.00.
- TOTAL: \$100,000.00

Maintenance of Burrowing Owl Preserve and Bald Eagle Conservation Easement: The District anticipates having to maintain this preserve area for the following items:

- Maintenance of burrowing owl preserve (222 acres) at a cost of \$4,500.00.
- Annual monitoring and reporting by the environmental professional at a cost of \$5,000.00.
- TOTAL: \$9,500.00

District-wide Contingency: This category includes any unforeseen maintenance or expenses within the District not listed above that may be incurred within the fiscal year. District-wide contingency is anticipated to be \$4,000.00.

Fiscal Year 2021 Revenue and Assessment Summary

	Number of acres	Number of lots	Proposed 2021 O&M assessment (per unit)	Total Assessment Revenue	Totals on Assessment Roll or Direct Collect
Platted lots tax collector, residential		2,718.00	\$135.40	\$368,017.20	\$368,017.20
Platted lots tax collector, commercial	43.41	6.00	\$576.26	\$25,015.45	\$25,015.45
Platted lots direct collect	-	103.00	\$135.40	\$13,946.20	\$13,946.20
Total lots		2,761.41			
Undeveloped direct collect	7,215.68		\$13.5252	\$97,593.52	\$97,593.52
Totals		9,977.09			\$504,572.36
less discounts					-\$15,721.29
plus interest income					\$400.00
plus other financing sources					\$40,423.87
plus transfer in fund balance					\$81,020.30
Total anticipated revenue					\$610,695.25

Note 1: Undeveloped Acreage does not include Stage 1 of the Viera Wilderness Park or other areas that are undevelopable.

Note 2: Undeveloped Acreage is an estimate based on total acres in the VSD less platted and undevelopable acres.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.13

7/21/2020

Subject:

Approval of Budget Change Requests

Fiscal Impact:

Dept/Office:

Budget Office

Requested Action:

It is requested that the Board of County Commissioners review and approve the attached Budget Change Requests.

Summary Explanation and Background:

In accordance with the Budget and Financial Policy (BCC-21), the attached budget change requests are being submitted for review and approval by the Board of County Commissioners.

Clerk to the Board Instructions:

Maintain necessary documents for records retention.



Budget Change Request (Form BCC-114)

Brevard County Budget Office

Fund: 1010-North Parks

Department: Parks and Recreation Department

Date: 7/9/2020

Program: NORTH AREA PARK OPERATIONS

Type of Request: Amendment

Revenue Change:

Miscellaneous
Statutory Reduction
Intergovernmental

Expenditure Change:

\$1,170,740	Operating Expenses	\$590,665
(\$63,341)	Reserves - Restricted	\$612,813
\$96,079		

Total: \$1,203,478

Total: \$1,203,478

Justification:

This Budget Change Request is being processed to recognize insurance proceeds and Federal and State FEMA proceeds from damage that occurred during Hurricane Irma within the Parks North Area of operation. Proceeds in the amount of \$590,665 are being budgeted within Repair and Maintenance and proceeds in the amount of \$612,813 are being held in reserves for payment on the Hurricane Irma repair loan from Risk Management.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014798

Approval:

LXWOJCIECHOW	Approved	06/17/2020
MEDONNER	Approved	06/18/2020
CLROLLYSON	Approved	07/08/2020
JJHAYES	Approved	07/08/2020
JPLIESENFELT	Approved	07/09/2020
FBABBATE	Approved	07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.

**Budget Change Request (Form BCC-114)****Brevard County Budget Office****Fund:** 0022-Manatee Hammock Park**Department:** Parks and Recreation Department**Date:** 7/9/2020**Program:** NORTH AREA PARK OPERATIONS**Type of Request:** Amendment**Revenue Change:**

Miscellaneous

Statutory Reduction

Expenditure Change:

\$439,148 Operating Expenses

(\$21,957)

\$417,191

Total: \$417,191**Total:** \$417,191**Justification:**

This Budget Change Request is being processed to recognize insurance proceeds from damage that occurred during Hurricane Irma within the Parks North Area of operation in Manatee Hammock Campground. These proceeds are being budgeted within Repair and Maintenance.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014799

Approval:

LXWOJCIECHOW

MEDONNER

CLROLLYSON

JJHAYES

JPLIESENFELT

FBABBATE

Approved

Approved

Approved

Approved

Approved

Approved

06/17/2020

06/18/2020

07/08/2020

07/08/2020

07/09/2020

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.

**Budget Change Request (Form BCC-114)****Brevard County Budget Office****Fund:** 0023-Long Point Park District 3**Department:** Parks and Recreation Department**Date:** 7/9/2020**Program:** SOUTH AREA PARK OPERATIONS**Type of Request:** Amendment**Revenue Change:**

Miscellaneous

Statutory Reduction

Expenditure Change:

\$14,037 Operating Expenses

(\$702)

\$13,335

Total: \$13,335**Total:** \$13,335**Justification:**

This Budget Change Request is being processed to recognize insurance proceeds from damage that occurred during Hurricane Irma within the Parks South Area of operation in Long Point Park. These proceeds are being budgeted within Repair and Maintenance.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014800

Approval:

LXWOJCIECHOW

MEDONNER

CLROLLYSON

JJHAYES

JPLIESENFELT

FBABBATE

Approved

Approved

Approved

Approved

Approved

Approved

06/17/2020

06/18/2020

07/08/2020

07/08/2020

07/09/2020

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.

**Budget Change Request (Form BCC-114)****Brevard County Budget Office****Fund:** 1019-Parks South Area Operations**Department:** Parks and Recreation Department**Date:** 7/9/2020**Program:** SOUTH AREA PARK OPERATIONS**Type of Request:** Amendment**Revenue Change:**

Intergovernmental

Miscellaneous

Statutory Reduction

Expenditure Change:

\$3,984 Operating Expenses

\$462,475

(\$23,323)

\$443,136

Total: \$443,136**Total:** \$443,136**Justification:**

This Budget Change Request is being processed to recognize insurance proceeds and Federal FEMA proceeds from damage that occurred during Hurricane Irma within the Parks South Area of operation. These proceeds are being budgeted within Repair and Maintenance.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014801

Approval:

LXWOJCIECHOW

MEDONNER

CLROLLYSON

JJHAYES

JPLIESENFELT

FBABBATE

Approved

Approved

Approved

Approved

Approved

Approved

06/17/2020

06/18/2020

07/08/2020

07/08/2020

07/09/2020

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.



Budget Change Request (Form BCC-114)

Brevard County Budget Office

Fund: 0017-Wickham Park

Date: 7/9/2020

Type of Request: Amendment

Department: Parks and Recreation Department

Program: SOUTH AREA PARK OPERATIONS

Revenue Change:

Miscellaneous

Statutory Reduction

Expenditure Change:

\$44,503 Operating Expenses

(\$2,225)

\$42,278

Total: \$42,278

Total: \$42,278

Justification:

This Budget Change Request is being processed to recognize insurance proceeds from damage that occurred during Hurricane Irma within the Parks South Area of operation in Wickham Park. These proceeds are being budgeted within Repair and Maintenance.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014802

Approval:

LXWOJCIECHOW

MEDONNER

CLROLLYSON

JJHAYES

JPLIESENFELT

FBABBATE

Approved

Approved

Approved

Approved

Approved

Approved

06/17/2020

06/18/2020

07/08/2020

07/08/2020

07/09/2020

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.

**Budget Change Request (Form BCC-114)****Brevard County Budget Office****Fund:** 0016-Central Parks**Department:** Parks and Recreation Department**Date:** 7/9/2020**Program:** CENTRAL PARK OPERATIONS**Type of Request:** Amendment**Revenue Change:**

Intergovernmental

Miscellaneous

Statutory Reduction

Expenditure Change:

\$28,351 Operating Expenses

\$690,686

(\$35,952)

\$683,085

Total: \$683,085**Total:** \$683,085**Justification:**

This Budget Change Request is being processed to recognize insurance proceeds and Federal and State FEMA proceeds from damage that occurred during Hurricane Irma within the Parks Central Area of operation. These proceeds are being budgeted within Repair and Maintenance.

Alternative:

If this budget change request is not approved, the insurance proceeds will not be budgeted and cannot be utilized.

SAP Document Number:

50014803

Approval:

LXWOJCIECHOW

MEDONNER

CLROLLYSON

JJHAYES

JPLIESENFELT

FBABBATE

Approved

Approved

Approved

Approved

Approved

Approved

06/17/2020

06/18/2020

07/08/2020

07/08/2020

07/09/2020

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.



Budget Change Request (Form BCC-114)

Brevard County Budget Office

Fund: 4151-Water Resources Improvement

Date: 7/9/2020

Type of Request: Line Item Transfer

Revenue Change:

Department: Utility Services Department

Program: COUNTY CAPITAL

Expenditure Change:

CIP \$1,100,000

Reserves - Capital (\$1,100,000)

Total: \$0

Total: \$0

Justification:

This change is needed due to starting construction of the North Courtenay Force Main Extension earlier than anticipated. This project is included on the May 5, 2020 Agenda, Item H.4, to create a North Merritt Island Transmission System - Capital Recovery Fee. This project is ready to go out for bid and is included in the FY21 Proposed Budget. \$600,000 will be taken from the West Cocoa WW Collection Improvements project, since this will not be needed this fiscal year, and \$1,100,000 will be taken from reserves.

Alternative:

Project can not be awarded.

SAP Document Number:

50014781

Approval:

ESWANKE

Approved

06/02/2020

EGFONTANIN

Approved

06/03/2020

CLROLLYSON

Approved

06/08/2020

JJHAYES

Approved

07/08/2020

JDENNINGHOFF

Approved

07/08/2020

FBABBATE

Approved

07/09/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS ____ DAY OF _____ 20__

Scott Ellis, Clerk

BY: _____ D.C.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.14

7/21/2020

Subject:

Permission to Develop and Advertise a Solicitation for Brevard County Disclosure Counsel

Fiscal Impact:

To Be Determined

Dept/Office:

Central Services / Purchasing Services

Requested Action:

It is requested that the Board of County Commissioners:

- Authorize the development and advertising of a Request for Proposal for Brevard County Disclosure Counsel
- Authorize the following individuals (or designees) to be appointed to the Selection and Negotiation Committees:
 - o Gerard Visco
 - o Katherine Wall
 - o Christine Schverak
- Authorize the Chair to execute all resulting contracts and contract related documents upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services
- Authorize the County Manager to approve any necessary budget change requests

Summary Explanation and Background:

The County's Disclosure Counsel performs the following services with respect to the issuance of bonds and matters relating thereto:

- Prepare all disclosure documents, describing the bonds and summarizing the underlying documents;
- Preparation of Preliminary Official Statement and an Official Statement;
- Perform due diligence with regard to County financings to provide full disclosure with respect to County financings;
- Assist the County in the compliance with federal and state securities laws;
- Render appropriate opinions to the County pertaining to disclosure as well as a reliance letter to the County's underwriters;
- Prepare the Continuing Disclosure Certificate in order to assist the underwriters in complying with the Continuing Disclosure Requirements of Rule 15c2-12;
- Review of secondary market submission; and
- Preparation of the Bond Purchase Agreement on behalf of the County, if required.

The agreement would effective for an initial term of three (3) years from its date of execution with the option

to renew for two (2) additional one (1) year periods.

The County previously selected a Disclosure Counsel in 2005 with a contract that automatically renewed each year on the contract anniversary after the initial five (5) year term. The existing contract is set to expire March 14, 2021. If this request to develop and advertise a Request for Proposal is approved, the County would notify the existing contractor of the County's intent to terminate on or before January 13, 2021 in accordance with sixty (60) day requirement as outlined in the existing contract termination language.

Clerk to the Board Instructions:

None

DISCLOSURE COUNSEL AGREEMENT

BRYANT MILLER & OLIVE P.A., a professional association organized under the laws of the State of Florida, the address of which is One Tampa City Center, Suite 2700, Tampa, Florida 33602 (the "Firm"), agrees to serve as Disclosure Counsel to BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

The Firm, as Disclosure Counsel will, when requested by the County, perform the following services with respect to the issuance of bonds and matters relating thereto:

1. Prepare all disclosure documents at the request of the County, but only insofar as such documents describe the bonds and summarize the underlying documents. However, we assume no responsibility for the disclosure documents insofar as such documents describe the financial circumstances of the offering or any other statistics, projections or data.
2. Preparation of a Preliminary Official Statement and an Official Statement.
3. Perform due diligence with regard to County financings to provide full disclosure with respect to County financings.
4. Assist the County in the compliance with federal and state securities laws.
5. Render appropriate opinions to the County pertaining to disclosure as well as a reliance letter to the County's underwriters.
6. Prepare the Continuing Disclosure Certificate in order to assist the underwriters in complying with the continuing disclosure requirements of Rule 15c2-12.
7. Review of secondary market submission.
8. Preparation of the Bond Purchase Agreement on behalf of the County, if required.

For the service described above, the County agrees that the Firm shall be compensated for Disclosure Counsel services, at the time the bonds or notes are issued, at a contingent fee to be determined based on the formula described below (such fee is completely contingent on the issuance of the bonds or notes):

<u>Amount of Issue</u>	<u>Fee</u>
Up to \$10,000,000 Flat Fee	\$16,000, plus out-of-pocket expenses
From \$10,000,000 to \$40,000,000 Fee per \$1,000 bonds issued	\$0.90 per \$1,000, plus out-of-pocket expenses (in addition to the fee described above for the first \$10,000,000 bonds issued)
Over \$40,000,000 Fee per \$1,000 bonds issued	\$0.65 per \$1,000, plus out-of-pocket expenses (in addition to the fee described above for the first \$40,000,000 bonds issued)

The Firm shall also be available to assist the County for hourly rate services unrelated to the specific issuance of a new debt or the provision of other extraordinary legal service identified and agreed by the County and the Firm; such services shall be performed at a rate of \$200 per hour, and shall be provided upon the request of the County. Invoices to the County for hourly legal services unrelated to specific issuance of a new debt shall be itemized and shall set forth the attorney's name, the subject of the charge, the time applicable to the charge and the rate per hour. Upon mutual agreement, the County and the Firm may alternatively agree to a negotiated fee structure for services unrelated to the specific issuance of a new debt.

It is understood and agreed by the parties that the County will reimburse the Firm for reasonable out-of-pocket expenses, as permitted by law, whether or not bonds or debt is ultimately issued.

This Agreement will be effective for a term of five years from its date of execution and will automatically renew for successive one-year terms after the initial five-year term, unless sooner terminated by either the County or the Firm.

The County may cancel or terminate this Agreement upon sixty days advance written notice to the Firm. In the event of cancellation, the Firm shall, unless otherwise requested by the County, immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the date of cancellation.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the County and the Firm.

DATED this 14th day of March, 2005.

(SEAL)

ATTEST:

By:
Ex-Officio Clerk of the Board of County
Commissioners of Brevard County, Florida

Approved as to Form and
Legal Sufficiency:

By:
County Attorney

BREVARD COUNTY, FLORIDA

By:
Chairman, Board of County Commissioners
As approved by the Board:
December 7, 2004

BRYANT MILLER & OLIVE P.A.

By:
Authorized Signatory



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.15

7/21/2020

Subject:

Permission to Amend Existing Integrated Supply Agreement, National Joint Purchasing Alliance (NJPA) Contract #061015-GPC for an Additional Year of Service

Fiscal Impact:

\$353,000.00

Dept/Office:

Central Services / Fleet Services

Requested Action:

It is requested that the Board of County Commissioners:

- Authorize Central Services / Fleet Services to amend their existing contract with Genuine Parts Company, doing business as NAPA Auto Parts for an additional one (1) year period, beginning, July 22, 2020 through July 21, 2021;
- Authorize the Chair to execute all resulting contract amendments and any other contract related documents, as necessary, upon review and approval by the County Attorney's Office, Risk Management and Purchasing Services; and
- Authorize the County Manager, or designee to approve any necessary Budget Change Requests.

Summary Explanation and Background:

National Joint Powers Alliance (NJPA) is a Minnesota-based Service Cooperative created by Minnesota Legislative Statute 123A.21. National Joint Powers Alliance (NJPA) is a public agency that serves as a member-focused cooperative for over 50,000-member agencies nationally.

Central Fleet services will save time and money, obtain higher quality products and services, and standardize products and services by using this cooperative contract. NJPA Auto Parts -Integrated Business Solutions utilizes their own resources and strategic partnerships to provide parts, service and expertise to assist Brevard County Central Fleet in providing a reliable and complete dedicated on-site source of repair parts and services for NJPA members. Advantages of the program are:

- Achieve a reduction in administrative procedures
- Reduce transactional costs through centralized billing across multiple vendors
- Deliver increase in on-demand parts availability
- Drive increases in fleet technician performance
- Reduce vehicle downtime in fleet operations
- Eliminate obsolete parts and shrinkage costs through efficient parts room management technologies
- Significantly reduce the cost of parts and warehouse inventory ownership

- Provide a turn-key sourcing solution service that will enable government agencies to operate the repair and warehouse facilities more efficiently, resulting in savings of funds through cost avoidance

The original agreement was awarded on July 21, 2015 with an initial term of four (4) years. The initial contract was then extended by one (1) year from July 22, 2019 through July 21, 2020. As the existing agreement is scheduled to expire on July 21, 2020 this extension will be effective July 22, 2020 through July 21, 2021. As stated in the Amendment, this contract will not be extended for any additional time beyond July 21, 2021.

Clerk to the Board Instructions:

Return fully executed copy of amendment to Steven Darling in Central Services.

AMENDMENT TO CONTRACT #061015-GPC

This Amendment is by and between **Sourcewell** and **Genuine Parts Company/NAPA Integrated Business Solutions (IBS)** (Vendor). Sourcewell and Vendor will be collectively known hereinafter as “Parties.”

Vendor was awarded a Sourcewell Contract for Fleet-Related Maintenance Equipment, Supplies, Services, and Inventory Management Solutions effective July 21, 2015, through July 21, 2019, relating to the provision of services by Vendor and to Sourcewell and its Members.

The parties agreed on May 30, 2018, to a “Letter of Agreement to Extend the Contract” for the 5th year renewal extension that will terminate on July 21, 2020. However, the parties agree to a 6th year extension in order to satisfy the validated needs and requests of Sourcewell Members , which would expire the contract on July 21, 2021.

The parties agree that certain terms within the Agreement will be updated and amended and only to the extent as hereunder provided.

In consideration of the mutual covenants and agreements described in this Amendment, the parties agree as follows:

1. This Amendment is effective upon the date of the last signature below and has the effect of extending the Agreement through July 21, 2021. This Agreement will not be extended for any additional time. Vendor understands that Sourcewell will no longer market this Agreement.
2. Effective June 6, 2018, NJPA changed its name to Sourcewell. All references in these documents to NJPA should be read as being replaced with “Sourcewell.”
3. The Agreement and any previous amendments are incorporated into this Amendment by reference.

(Balance of this page intentionally left blank.)

Except as amended by this Amendment, the Agreement remains in full force and effect.

Sourcewell

By: Jeremy Schwartz
AuthC: C0FD2A139D06489...

Jeremy Schwartz
Name – Printed

Title: Director of Operations & Procurement/CPO

Date: 11/20/2019 | 12:25 PM CST

APPROVED:

By: Chad Coauette
AuthC: 7E42B8F817A64CC...

Chad Coauette
Name – Printed

Title: Executive Director/CEO

Date: 11/20/2019 | 12:32 PM CST

**Genuine Parts Company/
NAPA Integrated Business Solutions (IBS)**

By: Jett Kuntz
AuthC: BBF6652DCC21445...

Jett Kuntz
Name – Printed

Title: Vice President

Date: 11/20/2019 | 11:09 AM CST



Integrated Business Solutions by NAPA

Fleet Supply Chain, Parts & Inventory Management

#061015-GPC

Maturity Date: 07/21/2020

Contract Documents







Contract Documents

Fleet-Related Maintenance Equipment, Supplies, Services, and Inventory Management Solutions

Contract #061015-GPC

Effective 07/21/2015 - 07/21/2020

Contract Documentation

-  **Request for Proposal (RFP)** (578.14 KB)
-  **Contract Forms** (10.4 MB)
-  **Contract Acceptance & Award** (627.23 KB)
-  **Contract Extension 2018** (499.2 KB)

Competitive Solicitation Documentation

- **Affidavit of Advertisement** (4.54 MB)
- **Proposal Opening Witness Page** (512.44 KB)
- **Proposal Evaluation** (246.62 KB)
- **Evaluation Committee Comment & Review** (971.78 KB)
- **Board Minutes** (31.42 KB)

Become a Member

Simply complete the online application or contact the Membership Team at membership@sourcewell-mn.gov or 877-585-9706.

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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Genuine Parts CO/NAPA Auto Parts		2. Amount: \$353,000
3. Fund/Account #: 389260-5510000	4. Department Name: Central Fleet	
5. Contract Description: Purchase of Auto Parts		
6. Contract Monitor: Carl Cotner, Manager		8. Contract Type: OPERATION EXPENSE
7. Dept/Office Director: Steven A Darling, Jr, Central Services		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cotner, Carl <small>Digitally signed by Cotner, Carl Date: 2020.07.07 12:48:12 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven <small>Digitally signed by Darling, Steven Date: 2020.07.07 12:52:37 -04'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2020.07.08 08:22:46 -04'00'</small>
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Genuine Parts CO/NAPA Auto Parts		2. Amount: \$353,000	
3. Fund/Account #: 389260-5510000		4. Department Name: Central Fleet	
5. Contract Description: Purchase of Auto Parts			
6. Contract Monitor: Carl Cotner, Manager		8. Contract Type: OPERATION EXPENSE	
7. Dept/Office Director: Steven A Darling, Jr, Central Services			
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cotner, Carl <small>Digitally signed by Cotner, Carl Date: 2020.07.07 12:48:12 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven <small>Digitally signed by Darling, Steven Date: 2020.07.07 12:52:37 -04'00'</small>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Valliere, Christine <small>Digitally signed by Valliere, Christine Date: 2020.07.07 15:20:25 -04'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.16

7/21/2020

Subject:

BCC-26 Acquisition of Consultant Professional Services Revision

Fiscal Impact:

None

Dept/Office:

Central Services / Purchasing Services

Requested Action:

It is requested that the Board of County Commissioners approve the amended BCC-26 Acquisition of Consultant Professional Services Policy

Summary Explanation and Background:

On July 12, 2016 the Board approved a revised BCC-26, Acquisition of Consultant Professional Services Policy in accordance with Florida Statute 287.055, "Consultants' Competitive Negotiation Act".

On July 1, 2020, the Florida Legislature passed House Bill 441 which increased the dollar thresholds for continuing contracts for construction projects. This modification requires a revision to the existing BCC-26, Acquisition of Consultant Professional Services Policy.

Attached to this Agenda item are:

- House Bill 441;
- The existing BCC-26 Acquisition of Consultant Professional Services Policy;
- A redline version of BCC-26, Acquisition of Consultant Professional Services Policy; and
- A clean version of BCC-26, Acquisition of Consultant Professional Services Policy.

Clerk to the Board Instructions:

Upon execution please return a copy to Steven Darling in Central Services

ENROLLED

CS/CS/HB 441

2020 Legislature

1
2 An act relating to the public procurement of services;
3 amending s. 255.103, F.S.; revising the maximum dollar
4 amount for continuing contracts for construction
5 projects; amending s. 287.055, F.S.; revising the term
6 "continuing contract" to increase certain maximum
7 dollar amounts for professional architectural,
8 engineering, landscape architectural, and surveying
9 and mapping services; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (4) of section 255.103, Florida
14 Statutes, is amended to read:

15 255.103 Construction management or program management
16 entities.—

17 (4) A governmental entity's authority under subsections
18 (2) and (3) includes entering into a continuing contract for
19 construction projects, pursuant to the process provided in s.
20 287.055, in which the estimated construction cost of each
21 individual project under the contract does not exceed \$4 ~~\$2~~
22 million. For purposes of this subsection, the term "continuing
23 contract" means a contract with a construction management or
24 program management entity for work during a defined period on
25 construction projects described by type which may or may not be

ENROLLED

CS/CS/HB 441

2020 Legislature

26 identified at the time of entering into the contract.

27 Section 2. Paragraph (g) of subsection (2) of section
28 287.055, Florida Statutes, is amended to read:

29 287.055 Acquisition of professional architectural,
30 engineering, landscape architectural, or surveying and mapping
31 services; definitions; procedures; contingent fees prohibited;
32 penalties.—

33 (2) DEFINITIONS.—For purposes of this section:

34 (g) A "continuing contract" is a contract for professional
35 services entered into in accordance with all the procedures of
36 this act between an agency and a firm whereby the firm provides
37 professional services to the agency for projects in which the
38 estimated construction cost of each individual project under the
39 contract does not exceed \$4 ~~\$2~~ million, for study activity if
40 the fee for professional services for each individual study
41 under the contract does not exceed \$500,000 ~~\$200,000~~, or for
42 work of a specified nature as outlined in the contract required
43 by the agency, with the contract being for a fixed term or with
44 no time limitation except that the contract must provide a
45 termination clause. Firms providing professional services under
46 continuing contracts shall not be required to bid against one
47 another.

48 Section 3. This act shall take effect July 1, 2020.

POLICY

TITLE: Acquisition of Consultant Professional Services

NUMBER: BCC-26

CANCELS: December 13, 2011

APPROVED: July 12, 2016

ORIGINATOR: Purchasing Services

REVIEW: July 12, 2019

I. OBJECTIVE

To prescribe policy for the selection process and acquisition of consultant professional services as defined by § 287.055, Florida Statutes.

II. REFERENCES AND DEFINITIONS

- A. §287.055, Florida Statutes - "Consultants' Competitive Negotiation Act".
- B. §287.017, Florida Statutes - Purchasing Categories, Threshold Amounts.
- C. Board – Brevard County Board of County Commissioners
- D. Design-Build Firm - A firm who holds a current certificate of registration under Chapter 489 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or holds a current certificate of registration under Chapter 481 to practice architect or landscape architecture; or a firm who holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
- E. Design Criteria Package - Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design build contract.
- F. Professional Services - Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping as defined by the laws of the State, or those services performed by an architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his/her professional employment or practice.
- G. Agency - The state or state agency, municipality, or political subdivision, a school district or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under §380.06 or §§163.3220-163.3243 of Florida Statutes.

- H. Firm - Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- I. Selection Committee - A committee appointed by the Board to evaluate and rate firms desiring to perform professional services for the County. The committee may be comprised of a County Commissioner in whose district the project is located or designee, County Manager or designee, the Department Director or designee, and staff employees having knowledge and interest in the project.
- J. Negotiating Committee - A committee appointed by the Board to negotiate a contract for professional services.. The committee shall be comprised of the County Manager or designee, Department Director or designee, and staff members of County government having knowledge and interest in the project requiring professional services. The County Attorney (or his designee) may be directed to assist the negotiating committee, but shall not be a member of the negotiating committee.
- K. Designee – When used in this Policy, any title such as Board of County Commissioners, County Manager, or Department Director is presumed to include that person’s official designee as if the Policy read “Board of County Commissioners or designee.”
- L. §286.011, Florida Statutes - Florida Government in the Sunshine Law requiring meetings be open to the public.
- M. Compensation - The amount paid by the Board for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.
- N. Continuing Contract - A contract for professional services entered into in accordance with all the procedures of Reference A., between an agency and a firm, whereby the firm provides professional services to the County for projects in which the estimated construction costs do not exceed \$2,000,000 per project or for study activity when the fee for such professional services does not exceed \$200,000 per, study, or for work of a specified nature as outlined in the contract required by the agency with the contract being for a fixed term or with no time limitation except that the contract shall provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.
- O. Negotiate (or any form of the word) – To conduct legitimate, arm’s length discussions and conferences to reach an agreement on a term or price. The term does not include presentation of flat-fee schedules with no alternatives or discussion.
- P. Project – A study or planning activity described in the public notice under Section III.B. A project may include:
 - 1. A grouping of minor construction, rehabilitation, or renovation activities.
 - 2. A grouping of substantially similar construction, rehabilitation, or renovation projects.
- M. Q, Brevard County Board of County Commissioners Procurement Policy BCC-25 – Specifies directives for procurement activities.

III. DIRECTIVES

A. PROJECT REQUIREMENTS DETERMINATION

Details of recommended projects shall be submitted to the Board for consideration. If approved, the Board minutes shall reflect approval of the project, method of financing, and appointment of a selection committee.

B. PUBLIC ADVERTISEMENT OF NEED FOR SERVICES AND EXCEPTIONS

All Board approved requirements for professional services shall be publicly advertised as outlined in Procurement Policy BCC-25. The advertisement shall be published once in a newspaper of general paid circulation, which is published at least five (5) days a week in the County. The advertisement shall appear at least fourteen (14) days prior to the last day set for the day of required submittal. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

1. Allowable exceptions to public advertisement include:
 - a. Projects involving a Board certified public emergency.
 - b. There shall be no public advertisement requirement or utilization of the selection process for projects in which the agency is able to reuse existing plans from a prior project. However, public advertisement for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.
2. With regard to paragraph 1 above, a competitive environment shall be utilized when feasible and practical.
3. A good faith estimate shall be provided in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

C. NON-COMPETITIVE SELECTION

In cases of planning/study activities estimated to cost is Category Two as defined in §287.017 F.S., or less, the Department Director shall submit the recommendation to the County Manager or his designee to approve the recommendation for non-competitive selection or to appoint a selection committee for further evaluation of qualified firms. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, all proposals shall be rejected and the procurement reinitiated under Section III.E. A competitive environment shall be utilized when feasible and practical.

D. COMPETITIVE SELECTION

1. Appointment and Quorum Requirements of Selection Committee

The Board or County Manager will appoint a selection committee to review and evaluate the statement of qualifications and performance data.. A County Commissioner may serve on the selection committee. A majority of the appointed selection committee shall constitute a quorum for all selection transactions.

2. Notification of Need for Services

- a. The Architect/Engineer Evaluation Criteria and scoring sheet attached or a similar scoring sheet shall be the sole means of "short listing" firms who have

submitted qualification packages and shall be provided to each interested party prior to their submittal. The selection committee shall review the submittals of the prospective consultants to determine which prospective consultants meet the necessary specific qualifications. Standard Form 330 (combines SF 254 and SF 255) attached may be utilized, or a format outlined in notice, for submittal of qualifications by prospective consultants.

- b. For publicly announced requirements, Purchasing Services, upon notification from the responsible Department/Office Director, shall publish a notice in a newspaper of general circulation in Brevard County and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Electronic posting of competitive opportunities shall be posted on the Brevard County Purchasing Website and the County's electronic Internet posting site at www.DemandStar.com/supplier.

Florida Statutes requires reasonable notice of public meetings, such as selection/negotiating sessions with consultants. The notice will include the committee name and purpose, location of meeting, date and time of meeting and required statements outlined under Sections 4 of Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC). A copy of the notice of public meeting shall be posted at the Purchasing Services Bulletin Board and County/Purchasing Website and in accordance with Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC).

The Chairman of the selection/negotiations committee will ensure a record of the meeting is maintained, either through a written or recorded method.

3. Certification of Consultants

- a. Any firm or individual desiring to provide professional services to the County must first be certified by the County as qualified pursuant to law and the regulations of the County. The County shall make a finding that the firm or individual with whom it contracts is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual. The selection committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. Consultant certification criteria shall include but may not be limited to ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads; and volume of work previously awarded, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. Attachment 1 shall be utilized for evaluation and

scoring to short list prospective firms for public presentations. The higher the score the more qualified the firm.

- b. The selection committee may observe public presentations and conduct discussions with the firms pertaining to the firms' qualifications, approach to the project, and ability to furnish the required service. Each selection committee member shall rate each firm/individual observed through personal presentations by assigning the top firm number 1, the second ranked firm number 2, etc. If interviews are not conducted, the ratings applied during the "short-list" phase will determine the rank order of firms for negotiation.
- c. The committee shall maintain this summary listing of the rank order of the firms being evaluated, present their recommendations of the three most qualified firms to the Board if at least three (3) firms respond to the announcement, and request appointment of a negotiating committee to negotiate a contract. Should the County be unable to negotiate a satisfactory contract with the firm considered to be most qualified at a price the County determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The County shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County shall terminate negotiations. The County shall then undertake negotiations with the third most qualified firm.

E. CONTRACT NEGOTIATION

1. The negotiating committee shall be appointed by the Board. The committee shall be comprised of the County Manager or his designee, Department Directors or designees, and staff members of County government having knowledge and interest in the project requiring professional services. A majority of the negotiating committee shall constitute a quorum for contract negotiations. The negotiating committee shall negotiate a contract with the most qualified firm for professional services at compensation, which is determined to be fair and reasonable. The County Attorney (or his designee) shall be assigned to assist the committee in its negotiations, but shall not be a member of the negotiating committee.
2. For all lump-sum or cost-plus fixed fee contracts exceeding Category 4 as defined in §287.017 F.S., the firm awarded the contract must execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustment shall be made within one (1) year following the end of the contract.
3. Each contract shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrant that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer as applicable) to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift or other

consideration contingent upon or resulting from the award or making of this agreement.

F. REJECTION OF ALL PROPOSALS

The Board shall reserve the right to reject all proposals and re-issue the notice of need for professional services.

G. PRECEDENCE OF FLORIDA STATUTES AND FEDERAL/STATE GRANT GUIDELINES

In the case of any contradictions, irregularities or ambiguities between the procedures established in this policy and §287.055, Florida Statutes, also known as the Consultants' Competitive Negotiation Act, requirements directed in §287.055, F.S., applicable federal laws, as well as grant guidelines and provisions, or any other applicable Statute shall apply.

H. CONTRACT ADMINISTRATION

1. When a contract has complied with the acquisition process set forth in this policy and has been approved and executed by the Board, the Board delegates authority to the County Manager, or designee, to execute individual amendments, addenda, or task order increases when under \$100,000 and greater than or equal to \$50,000; Assistant County Manager when under \$50,000 and greater than or equal to \$25,000; and Department Director when under \$25,000, when each is within the budgeted amount for the project.
2. Amendments, addenda or task order increase amounts are to be considered individually and not cumulatively for the purpose of determining approval authority.
3. Splitting of amendments, addenda or task order increases to circumvent established approval authority thresholds is prohibited.
4. In the case of continuing consultant contracts, all amendments, addenda, and task order increases shall comply with the limitations for continuing consultant contracts as set forth herein and in §287.055, Florida Statutes.

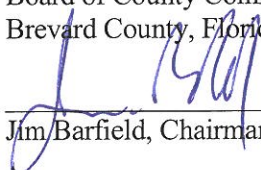
IV. RESERVATION OF AUTHORITY

The Board reserves the right to amend or modify this policy at anytime.

Attest:


SCOTT ELLIS, CLERK

Board of County Commissioners
Brevard County, Florida


Jim Barfield, Chairman

(Approved by the Board of County
Commissioners on July 12, 2016.)

PROJECT NAME
ARCHITECTURAL/ENGINEERING DESIGN SERVICES
BREVARD COUNTY, FLORIDA

SELECTION COMMITTEE SHORTLIST WORKSHEET

FIRM NAME: _____ **DATE:** _____
COMMITTEE MEMBER: _____

A. INTRODUCTION/COVER LETTER (Y/N)

Respondents should provide no more than a two (2) page letter of introduction. The letter should highlight or summarize whatever information a respondent deems appropriate as a cover letter, but at the least, this section should include the name, address, telephone number and FAX number of one person to whom all correspondence should be directed.

Notes/Comments:

B. BUSINESS ORGANIZATION (Y/N)

Describe the business organization, who will serve as major participants and their respective roles, and the following information as to business operations:

1. Organization: State the full name, address and telephone number of the proposing firm/organization(s). Include Federal I.D. number and Corporate Charter Number.
 - a. Indicate whether those in the proposing group will operate as a sole proprietorship, individual, partnership or corporation, and the state of its incorporation or license to operate.
 - b. As applicable, provide the name of the branch office or other subordinate element that will perform or assist in performing the services described herein.
2. Major Participants: Recognizing the scope of this project, interested parties may select to use joint venture partners or sub-consultants. Provide the following in list form on a summary page (specific information about each should be provided in an Appendix, if desired).
 - a. A list of major participants and complete addresses, and their relationship to the respondent, whether as a joint venture, partner, subsidiary, or sub-consultant.
 - b. Should any of the above participants include a Minority Business Enterprise (MBE), this should be noted along with the entity under which they are designated or certified as an MBE, along with the entity that has so certified the respondent as an MBE.
 - c. Specific role in the project of all participants noted above.
 - d. Estimated percentages of participation of all participants noted above.

Notes/Comments:

3. Experience/References (35 Pts): Respondents must provide a list of work on projects relating to consulting. The information will be presented in summary form and then can be followed as appropriate by a narrative.
 - a. List the five projects for which your firm has provided/is providing consulting services. In determining which projects are most related, consider: related size and complexity; how many of the consultants which are part of your proposed team worked on the listed project; and, how recently the project was completed. List the projects in priority order, with the most related project listed first.
 - b. For each of the listed projects, provide the following information: size, construction cost (original construction cost and final construction cost), current phase of development, estimated (or past) completion date, type of delivery method (lump sum, design/build, construction management at risk, etc.), scope of services, name of design team members within your firm and titles, name of Consultants Owner's contact person and telephone number, and the name and telephone number of the general contractor.

Notes/Comments:

4. Respondent's Personnel (15 pts)
- List total number of your firm's key personnel by skill group (ie: construction administrators, mechanical, electrical, civil, structural, etc).
 - Name all key personnel which will be part of the consulting team for this program and provide their cities of residence. Describe in detail each member's experiences with consulting services including evaluations, peer review of designs by others, construction monitoring, core sampling, fastener pullout resistance testing and other related services as may be required by Brevard County.
 - For each project listed in response to Number 3, list the members of the proposed team who worked on the project and describe their roles.
 - If the team as a whole provided design services for any of the projects listed in response to Number 3, so indicate.

Notes/Comments:

5. Respondent's Consultants (Y/N)
Name any consultants which are included as part of the proposed team and the name and title of each individual and their specific responsibility.

Notes/Comments:

6. Construction Cost Control (12 pts)
For any three (3) of the projects listed in response to Number 3, describe cost control methods for the construction phase. How did you develop cost estimates and how often were they updated? Provide examples of how these techniques were used and what degree of accuracy was achieved. Include examples of successful value engineering to maintain project budgets without sacrificing quality. Include a sample of a cost estimate. (Note: follow instructions for work product samples included in this section of the Request for Proposal when submitting this example).

Notes/Comments:

7. Scheduling (9 pts)
For any three (3) of the projects listed in response to Number 3, describe the way in which your firm developed and maintained design and construction project schedules. How did you develop schedules and how often were they updated? Provide examples of how these techniques were used. Include specific examples of scheduling challenges, and how your firm helped solve them. Submit an example of a project schedule. (Note: follow instructions for work product samples included in this section of the Request for Proposal when submitting this example).

Notes/Comments:

8. Information Management (8 pts)
For any three (3) of the projects listed in response to Number 3, describe the types of records, field records, logs, meeting minutes, monthly reports, monitoring systems and information management systems which your firm used in the management of those projects. Provide examples of each report used. (Note: follow instructions for work product samples included in this section of the Request for Proposal when submitting these examples).

Notes/Comments:

9. Conflict Resolution (4 pts)
For any three (3) of the projects listed in response to Number 3, describe conflicts or potential conflicts with the Owner, general contractor or trade contractors, and describe the methods used to prevent and/or resolve those conflicts.

Notes/Comments:

10. Quality Control (4 pts)
For any three (3) of the projects listed in response to Number 3, describe the way your firm maintained quality control during the programming, schematic design, design development, construction and warranty phases. Provide specific examples of how these techniques were used.

Notes/Comments:

11. Joint Venture (Y/N)
Is the applicant a joint venture? If so, describe the division of responsibilities between the participating firms, the offices (location) that will be the primary participants, and the percent interest of each firm. Also, duplicate the signature block and have a principal or officer sign on behalf of each party to the joint venture. Attach a copy of your joint venture agreement to each copy of the proposal. (The joint venture agreement should be numbered).

Notes/Comments:

12. Design Cost Controls (13 pts)
For three (3) of the projects listed in response to Number 3, describe how your firm controls internal costs during the design and construction administration phases.

Notes/Comments:

13. Confirmation and Acceptance (Y/N)
By submission of a response to this Request for Proposal the respondent makes the following acknowledgements/certifications. Include a signed and notarized statement indicating confirmation and acceptance.
- a. Your firm/organization/joint venture consents that proposals will not be accepted from any company, firm, person, or party, parent or subsidiary, against which the County has an outstanding claim, or a financial dispute relating to prior contract performance with the County. If at any point of the evaluation the County discovers such a dispute, the Proposal will be rejected.
 - b. Through a statement of disclosure, your firm/organization/joint venture will provide sufficient detail of any relationship, especially financial, between members of your firm and any County employees or their family members. This will allow the County to evaluate possible conflicts of interest. The County will determine whether the extent of any conflict of interest will disqualify the respondent.
 - c. Your firm/organization/joint venture consents that its proposal will remain valid for a period of not less than sixty (60) days from the due date of proposals.
 - d. Regarding information furnished by the applicant herewith, and as may be provided subsequently (including information presented at interview, if a finalist):
 - 1. All information of a factual nature is certified to be true and accurate.
 - 2. All statements of intent or proposed future action (including the assignment of personnel and the provision of services) are commitments that will be honored by the respondent if awarded the contract.
 - e. The respondent has not been convicted of a public entity crime within the past 36 months, as set forth in Section 287.133, Florida Statutes.
 - f. If any information provided by the applicant is found to be, in the sole discretion of the Selection Committee or Board of County Commissioners, substantially unreliable, the applicant's proposal may be rejected.
 - g. The Selection Committee may reject all applicants and may stop the selection process at any time and for any reason.
 - h. The selection of finalists for interview will be made on the basis of information provided herein. The interviewed firms will be ranked based on their total scores earned as a result of their responses to the interview questions and the results of the reference checks.
 - i. It is understood that this proposal must be received at Brevard County (Department/Division), 2725 Judge Fran Jamieson Way, Viera, Florida 32940 no later than _____ on _____.

Notes/Comments:

POINT MATRIX

ARCHITECTURAL/ENGINEERING DESIGN SERVICES BREVARD COUNTY, FLORIDA

SECTION	MAXIMUM POINTS	ACTUAL POINTS
1. Introduction/Cover Letter	Y/N	
2. Business Organization	Y/N	
3. Experience/References	35 points	
4. Respondent's Personnel	15 points	
5. Respondent's Consultants	Y/N	
6. Construction Cost Control	12 points	
7. Scheduling	9 points	
8. Information Management	8 points	
9. Conflict Resolution	4 points	
10. Quality Control	4 points	
11. Joint Venture	Y/N	
12. Design Cost Controls	13 points	
13. Confirmation of Acceptance	Y/N	
TOTAL	Possible 100 Points	

ARCHITECT-ENGINEER QUALIFICATIONSOMB No.: 9000-0004
Expires:

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 541-544) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection and interviews with at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract with the most highly qualified firm at a fair and reasonable price.

The information used to evaluate firms is from this form and other sources; it includes performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that is part of the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of

pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that is part of the proposed team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS**Part I - Contract-Specific Qualifications:**

1. and 2. Page Number and Total Pages. Number each page of Part I sequentially, including any additional sheets, and indicate the total number of pages on each page.

Section A. Contract Information.

3. and 4. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

5. Public Notice Date. Enter the posted date of the agency's notice on FedBizOpps, other form of public announcement or agency request for this contract.

6. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact

7-11. Name, Title, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

DRAFTSTANDARD FORM 330 (i) PAGE 1
Prescribed by GSA - FAR (48 CFR) 53.236-2(b)

Section C. Proposed Team

12-14. **Firm Name, Address, and Role in This Contract.** Indicate the contractual relationship (prime contractor, joint venture partner or subcontractor) and provide the name, full mailing address, and role of each firm that will be involved in performance of this contract. If a firm has branch offices, indicate each individual branch office that will be part of the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Firms and Key Personnel

On a separate sheet, inserted after Section C, present an organizational flowchart showing each firm (and each branch office, if appropriate) listed in Section C, and the names and roles of all key personnel listed in Section E.

Section E. Resumes of Key Personnel Proposed for This Contract

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

15. **Name.** Self-explanatory.

16. **Role in This Contract.** Self-explanatory.

17. **Years Experience.** Total years of relevant experience (block 17a), and years of relevant experience with this firm, but not necessarily the same branch office (block 17b).

18. and 19. **Firm Name and Firm Location.** Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

20. **Education.** Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of emphasis for each degree under Specialization (block 20d). If the person has more than two relevant degrees, show in Other Professional Qualifications (block 22).

21. **Current Professional Registration.** Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36. If the person has more than two relevant professional registrations, show in Other Professional Qualifications (block 22).

22. **Other Professional Qualifications.** Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, security clearance, and foreign language capabilities.

23. **Relevant Projects.** Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. If any of the professional services or construction projects are not complete, leave Year Completed (block (3)) blank and indicate the status in Description (block (4)). Only attach photographs if requested by the agency.

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

24. **Title.** Title of project or contract.

25. **Location.** Self-explanatory.

26. **Project Owner.** Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

27. **Project Owner's Point of Contact.** Provide information about a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

28. **Brief Description of Project and Relevance to This Contract.** Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Only attach photographs if requested by the agency.

29. and 30. **Professional Services and Construction.** Enter the year completed and cost of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed and cost of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed (block 29a or 30a) blank and indicate the status in Brief Description (block 28).

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STANDARD FORM 330 ii PAGE 2

31. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as in Section C.

32. Awards. Describe any awards the project received from governmental agencies or industry or professional organizations. Only attach the awards if requested by the agency.

33. Additional Project Information. Enter specific data requested by the agency for each example project. See the Commerce Business Daily or other types of announcements.

Section G. Key Personnel Participation in Example Projects

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

34. and 35. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

36. Example Projects Listed in Section F. In the column under each project key number (see block 37) and for each key person, insert a "1" if the person was involved in any

role with the project or a "2" if the person performed in the same or similar role as proposed for this contract. Attach an additional Section G sheet if needed.

37. Example Projects Key. List the titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information

38. Use this section to provide information specifically requested by the agency or to address selection criteria which are not covered by the information provided in Sections A-G. Typical information which may be required in this section includes: computer-aided design capabilities, metric design experience, quality management procedures, special contract capabilities, specialized equipment, security clearances, capacity to perform this contract in the required time period, knowledge of the project locality and local regulations, and contract awards by Federal agencies.

Section I. Authorized Representative

39. and 40. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

34. NAMES OF KEY PERSONNEL (From Section E, Block 15)	35. ROLE IN THIS CONTRACT (From Section E, Block 16)	36. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "1" under project key number for project participation in any role; Place "2" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	1		2							
Joseph B. Williams	Chief Mech. Engineer	2	2	2	2						
Tara C. Donovan	Chief Elec. Engineer	2	1		2						
Evan D. Summer	CADD Technician	1	1	2	1						

37. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	3	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	4	Founder's Museum, Newport RI

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STANDARD FORM 330 0 PAGE 3

41. and 42. Name and Title of Authorized Representative. Provide this information for the authorized representative who signed the form.

Part II - General Qualifications

See the "General Instructions" on page 1 for firms with branch offices. If a firm has branch offices, prepare Part II for the specific branch office seeking work.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2f. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. See FAR Part 4. No DUNS number is required if the firm has not been issued one.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the description of the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions.

6a-6d. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years.

Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. If Part II is prepared for a firm (including all branch offices), enter the number of employees by discipline in Col. c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in Col. c(2) and for the firm in Col. c(1). Use the relevant disciplines and associated function codes shown at the end of these instructions, and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. Each person can be counted only once according to his/her primary function.

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any additional relevant project experiences and leave the profile code blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see FAR Subpart 19.1 "Annual Receipts".

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

DRAFT

STANDARD FORM 330 (PAGE 4

List of Disciplines (Function Codes)

Code	Description
01	Administrative
02	Architects
03	Biologists
04	CADD Technicians
05	Cartographers
06	Chemists
07	Construction Inspectors
08	Construction Managers
09	Draftspersons
10	Ecologists
11	Economists
	Engineers:
12	Acoustical
13	Aeronautical
14	Chemical
15	Civil
16	Communications
17	Corrosion
18	Cost (Estimators)
19	Electrical/Electronic
20	Environmental
21	Fire Protection
22	Forensic
23	Foundation/Geotechnical
24	Industrial
25	Information Systems
26	Materials
27	Mechanical
28	Mining
29	Safety/Occupational Health
30	Soils
31	Specifications
32	Structural
33	Transportation
34	Value
35	Environmental Scientists
36	Geodetic Surveyors
37	Geologists
38	Geospatial Information Systems
39	Technicians/Analysts
40	Health Facility Planners
41	Hydrologists
42	Industrial Hygienists
43	Interior Designers
44	Landscape Architects
45	Oceanographers
46	Planners: Urban/Regional
47	Project Managers
48	Risk Assessors
49	Schedulers
50	Security Specialists
51	Topographic Surveyors
52	Toxicologists

DRAFT

STANDARD FORM 330 (1) PAGE 5

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E06	Energy Conservation; New Energy Sources
A02	Aerial Photogrammetry	E07	Engineering Economics
A03	Agricultural Development; Grain Storage; Farm Mechanization	E08	Environmental Impact Studies, Assessments or Statements
A04	Air Pollution Control	E09	Environmental Remediation
A05	Airports; Navais; Airport Lighting; Aircraft Fueling; Paving	E10	Environmental Testing and Analysis
A06	Airports; Terminals and Hangars; Freight Handling	F01	Fallout Shelters; Blast-Resistant Design
A07	Arctic Facilities	F02	Field Houses; Gyms; Stadiums
A08	Animal Facilities	F03	Fire Protection
A09	Asbestos Abatement	F04	Fisheries; Fish ladders
A10	Auditoriums & Theaters	F05	Forensic Engineering
A11	Automation; Controls; Instrumentation	F06	Forestry & Forest products
B01	Barracks; Dormitories	G01	Galleries
B02	Bridges	G02	Garages; Vehicle Maintenance Facilities; Parking Decks
C01	Cemeteries (<i>Planning & Relocation</i>)	G03	Gas Systems (Propane; Natural, Etc.)
C02	Chemical Processing & Storage	G04	Geographic Information System Development/Analysis
C03	Child Care/Development Facilities	G05	Graphic Design
C04	Churches; Chapels	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C05	Coastal Engineering	H02	Hazardous Materials Handling and Storage
C06	Codes; Standards; Ordinances	H03	Hazardous, Toxic, Radioactive Waste Remediation
C07	Cold Storage; Refrigeration and Fast Freeze	H04	Heating; Ventilating; Air Conditioning
C08	Commercial Building (<i>low rise</i>); Shopping Centers	H05	Health Systems Planning
C09	Community Facilities	H06	Highrise; Air-Rights-Type Buildings
C10	Communications Systems; TV; Microwave	H07	Highways; Streets; Parking Lots
C11	Computer Facilities; Computer Service	H08	Historical Preservation
C12	Conservation and Resource Management	H09	Hospital & Medical Facilities
C13	Construction Management	H10	Hotels; Motels
C14	Construction Surveying	H11	Housing (<i>Residential, Multi-Family; Apartments; Condominiums</i>)
C15	Corrosion Control; Cathodic Protection; Electrolysis	H12	Hydraulics & Pneumatics
C16	Cost Engineering and Analysis; Parametric Costing; Forecasting; Risk Analysis; Life Cycle Costing	H13	Hydrographic Surveying
C17	Cryogenic Facilities	I01	Industrial Buildings; Manufacturing Plants
D01	Dams (<i>Concrete; Arch</i>)	I02	Industrial Processes; Quality Control
D02	Dams (<i>Earth; Rock</i>); Dikes; Levees	I03	Industrial Waste Treatment
D03	Desalinization (<i>Process & Facilities</i>)	I04	Interior Design; Space Planning
D04	Design-Build	I05	Irrigation; Drainage
D05	Dining Halls; Clubs; Restaurants	J01	Judicial and Courtroom Facilities
D06	Dredging Studies and Design	L01	Laboratories
E01	Ecological & Archeological Investigations	L02	Land Boundary Surveying
E02	Educational Facilities; Classrooms	L03	Landscape Architecture
E03	Electrical Studies and Design	L04	Libraries
E04	Electronics		
E05	Elevators; Escalators; People-Movers		

DRAFT

STANDARD FORM 330 () PAGE 6

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
L05	Lighting (Interior; Display; Theater, Etc.)	R06	Rehabilitation (Buildings; Structures; Facilities)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R07	Research Facilities
		R08	Resources Recovery;
		R09	Recycling Risk Analysis
M01	Materials Handling Systems; Conveyors; Sorters	R10	Rivers; Canals; Waterways; Flood Control
M02	Metallurgy	R11	Roofing
M03	Microclimatology; Tropical Engineering	S01	Safety Engineering; Accident Studies; OSHA Studies
M04	Military Design Standards	S02	Security Systems; Intruder & Smoke Detection
M05	Mining & Mineralogy	S03	Seismic Designs & Studies
M06	Missile Facilities (Silos; Fuels; Transport)	S04	Sewage Collection, Treatment and Disposal
M07	Modular Systems Design; Pre-Fabricated Structures or Components	S05	Soils & Geologic Studies; Foundations
M08	Museums	S06	Solar Energy Systems
N01	Naval Architecture; Off-Shore Platforms	S07	Solid Wastes; Incineration; Landfill
N02	Nuclear Facilities; Nuclear Shielding	S08	Special Environments; Clean Rooms, Etc.
O01	Office Buildings; Industrial Parks	S09	Structural Design; Special Structures
O02	Oceanographic Engineering	S10	Surveying; Platting; Mapping; Flood Plain Studies
O03	Ordnance; Munitions; Special Weapons	S11	Sustainable Design
		S12	Swimming Pools
P01	Petroleum Exploration; Refining	S13	Storm Water Handling & Facilities
P02	Petroleum and Fuel (Storage and Distribution)	T01	Telephone Systems (<i>Rural; Mobile; Intercom, Etc.</i>)
P03	Pipelines (Cross-Country - Liquid & Gas)	T02	Testing & Inspection Services
P04	Planning (Community, Regional, Areawide and State)	T03	Traffic & Transportation Engineering
P05	Planning (Site, Installation, and Project)	T04	Topographic Mapping
P06	Plumbing & Piping Design	T05	Towers (<i>Self-Supporting & Guyed Systems</i>)
P07	Prisons & Correctional Facilities	T06	Tunnels & Subways
P08	Product, Machine Equipment Design	U01	Unexploded Ordnance Remediation
P09	Pneumatic Structures, Air-Support Buildings	U02	Urban Renewals; Community Development
P10	Postal Facilities	U03	Utilities
P11	Power Generation, Transmission, Distribution	V01	Value Analysis; Life-Cycle Costing
P12	Public Safety Facilities	W01	Warehouses & Depots
R01	Radar; Sonar; Radio & Radar Telescopes	W02	Water Resources; Hydrology; Ground Water
R02	Radio Frequency Systems & Shieldings	W03	Water Supply; Treatment and Distribution
R03	Railroad; Rapid Transit	W04	Wind Tunnels; Research/Testing Facilities Design
R04	Recreation Facilities (Parks, Marinas, Etc.)	Z01	Zoning; Land Use Studies
R05	Refrigeration Plants/Systems		

DRAFT

STANDARD FORM 330 a PAGE 7

ARCHITECT - ENGINEER QUALIFICATIONS		1. PAGE NUMBER	2. TOTAL PAGES
PART I - CONTRACT-SPECIFIC QUALIFICATIONS			
A. CONTRACT INFORMATION			
3. TITLE		4. LOCATION (City and State)	
5. PUBLIC NOTICE DATE		6. SOLICITATION OR PROJECT NUMBER	
B. ARCHITECT-ENGINEER POINT OF CONTACT			
7. NAME		8. TITLE	
9. TELEPHONE NUMBER	10. FAX NUMBER	11. E-MAIL ADDRESS	
C. PROPOSED TEAM			
<i>(Complete this section for the prime contractor and all other firms proposed for this contract. If a firm has branch offices, complete this section for the particular branch office(s) proposed for the contract.)</i>			
"X" ONE	12. FIRM NAME	13. ADDRESS	14. ROLE IN THIS CONTRACT
PRIME			
J-V			
PARTNER			
SUBCON-			
TRACTOR			
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i.			
D. ORGANIZATIONAL CHART OF FIRMS AND KEY PERSONNEL			
<input type="checkbox"/> (Attached)			

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STANDARD FORM 330 (I) PAGE 8

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT (Complete one Section E for each key person.)				PAGE NUMBER	TOTAL PAGES
15. NAME		16. ROLE IN THIS CONTRACT		17. YEARS EXPERIENCE	
				a. TOTAL	b. WITH THIS FIRM
18. FIRM NAME			19. FIRM LOCATION (City and State)		
20. EDUCATION					
a. DEGREE	b. DISCIPLINE	c. YEAR	d. SPECIALIZATION		
21. CURRENT PROFESSIONAL REGISTRATION			22. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.)		
a. STATE	b. YEAR FIRST REGISTERED	c. DISCIPLINE			
23. RELEVANT PROJECTS					
(1) TITLE		(2) LOCATION (City and State)		(3) YEAR COMPLETED	
				PROFESSIONAL SERVICES	CONSTRUCTION (If applicable)
a. (4) DESCRIPTION (Brief scope, size, cost, etc.)				(5) SPECIFIC ROLE	
<input type="checkbox"/> Check if photos attached					
(1) TITLE		(2) LOCATION (City and State)		(3) YEAR COMPLETED	
				PROFESSIONAL SERVICES	CONSTRUCTION (If applicable)
b. (4) DESCRIPTION (Brief scope, size, cost, etc.)				(5) SPECIFIC ROLE	
<input type="checkbox"/> Check if photos attached					
(1) TITLE		(2) LOCATION (City and State)		(3) YEAR COMPLETED	
				PROFESSIONAL SERVICES	CONSTRUCTION (If applicable)
c. (4) DESCRIPTION (Brief scope, size, cost, etc.)				(5) SPECIFIC ROLE	
<input type="checkbox"/> Check if photos attached					
(1) TITLE		(2) LOCATION (City and State)		(3) YEAR COMPLETED	
				PROFESSIONAL SERVICES	CONSTRUCTION (If applicable)
d. (4) DESCRIPTION (Brief scope, size, cost, etc.)				(5) SPECIFIC ROLE	
<input type="checkbox"/> Check if photos attached					
(1) TITLE		(2) LOCATION (City and State)		(3) YEAR COMPLETED	
				PROFESSIONAL SERVICES	CONSTRUCTION (If applicable)
e. (4) DESCRIPTION (Brief scope, size, cost, etc.)				(5) SPECIFIC ROLE	
<input type="checkbox"/> Check if photos attached					

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STANDARD FORM 330 □ PAGE 9

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		PAGE NUMBER	TOTAL PAGES
24. TITLE			
25. LOCATION <i>(City and State)</i>		26. PROJECT OWNER	
27. PROJECT OWNER'S POINT OF CONTACT			
a. NAME	b. TELEPHONE	d. E-MAIL ADDRESS	
	c. FAX NUMBER		
28. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT			
<input type="checkbox"/> CHECK IF PHOTOGRAPH(S) OF PROJECT ATTACHED <i>(If applicable)</i>			
29. PROFESSIONAL SERVICES		30. CONSTRUCTION <i>(If applicable)</i>	
a. YEAR COMPLETED	b. FEE	a. YEAR COMPLETED	b. COST
31. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT			
a.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
b.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
c.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
d.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
e.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
f.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
g.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
h.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
i.	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
32. AWARDS <i>(If applicable)</i>		33. ADDITIONAL PROJECT INFORMATION	

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STANDARD FORM 330 (I) PAGE 10

37. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1		6	
2		7	
3		8	
4		9	
5		10	

STANDARD FORM 330 () PAGE 11

H. ADDITIONAL INFORMATION

PAGE NUMBER TOTAL PAGES

38. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS REQUIRED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

39. SIGNATURE

40. DATE

41. NAME (Print or type)

42. TITLE (Print or type)

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STANDARD FORM 330 () PAGE 12

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STANDARD FORM 330 () PAGE 13



TITLE: Acquisition of Consultant Professional Services

NUMBER: BCC-26

CANCELS ~~December 13, 2014~~ July 12, 2016

APPROVED: July ~~12, 2016~~ 12, 2020

ORIGINATOR: Purchasing Services

REVIEW: July ~~12, 2019~~ 12, 2021

POLICY

I. OBJECTIVE

To prescribe policy for the selection process and acquisition of consultant professional services as defined by § 287.055, Florida Statutes.

II. REFERENCES AND DEFINITIONS

- A. §287.055, Florida Statutes - "Consultants' Competitive Negotiation Act".
- B. §287.017, Florida Statutes - Purchasing Categories, Threshold Amounts.
- C. Board – Brevard County Board of County Commissioners
- D. Design-Build Firm - A firm who holds a current certificate of registration under Chapter 489 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or holds a current certificate of registration under Chapter 481 to practice architect or landscape architecture; or a firm who holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
- E. Design Criteria Package - Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design build contract.
- F. Professional Services - Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping as defined by the laws of the State, or those services performed by an

architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his/her professional employment or practice.

- G. Agency - The state or state agency, municipality, or political subdivision, a school district or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under §380.06 or §§163.3220-163.3243 of Florida Statutes.
- H. Firm – Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- I. Selection Committee – A committee appointed by the Board to evaluate and rate firms desiring to perform professional services for the County. The committee may be comprised of a County Commissioner in whose district the project is located or designee, County Manager or designee, the Department Director or designee, and staff employees having knowledge and interest in the project.
- J. Negotiating Committee – A committee appointed by the Board to negotiate a contract for professional services. The committee shall be comprised of the County Manager or designee, Department Director or designee, and staff members of County government having knowledge and interest in the project requiring professional services. The County Attorney (or his designee) may be directed to assist the negotiating committee, but shall not be a member of the negotiating committee.
- K. Designee – When used in this Policy, any title such as Board of County Commissioners, County Manager, or Department Director is presumed to include that person's official designee as if the Policy read "Board of County Commissioners or designee."
- L. §286.011, Florida Statutes – Florida Government in the Sunshine Law requiring meetings be open to the public.
- M. Compensation – The amount paid by the Board for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.
- N. Continuing Contract – A contract for professional services entered into in accordance with all the procedures of Reference A., between an agency and a firm, whereby the firm provides professional services to the County for projects in which the estimated construction costs do not exceed ~~\$2,000,000~~\$4,000,000 per project or for study activity when the fee for such professional services does not exceed ~~\$200,000~~\$500,000 per, study, or for work of a specified nature as outlined in the contract required by the agency with the contract being for a fixed term or with no time limitation except that the contract shall provide a termination

clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

- O. Negotiate (or any form of the word) – To conduct legitimate arm's length discussions and conferences to reach an agreement on a term or price. The term does not include presentation of flat-fee schedules with no alternatives or discussion.
- P. Project – A study or planning activity described in the public notice under Section III.B. A project may include:
 - 1. A grouping of minor construction, rehabilitation, or renovation activities.
 - 2. A grouping of substantially similar construction, rehabilitation, or renovation projects.
- Q. Brevard County Board of County Commissioners Procurement Policy BCC-25 – Specifies directives for procurement activities.

III. DIRECTIVES

A. PROJECT REQUIREMENTS DETERMINATION

Details of recommended projects shall be submitted to the Board for consideration. If approved, the Board minutes shall reflect approval of the project, method of financing, and appointment of a selection committee.

B. PUBLIC ADVERTISEMENT OF NEED FOR SERVICES AND EXCEPTIONS

All Board approved requirements for professional services shall be publicly advertised as outlined in Procurement Policy BCC-25. The advertisement shall be published once in a newspaper of general paid circulation, which is published at least five (5) days a week in the County. The advertisement shall appear at least fourteen (14) days prior to the last day set for the day of required submittal. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

- 1. Allowable exceptions to public advertisement include:
 - a. Projects involving a ~~Board-certified~~Board-certified public emergency.
 - b. There shall be no public advertisement requirement or utilization of the selection process for projects in which the agency is able to reuse existing plans from a prior project. However, public advertisement for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

2. With regard to paragraph 1 above, a competitive environment shall be utilized when feasible and practical.
3. A good faith estimate shall be provided in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

C. NON-COMPETITIVE SELECTION

In cases of planning/study activities estimated to cost is Category Two as defined in §287.017 F.S., or less, the Department Director shall submit the recommendation to the County Manager or his designee to approve the recommendation for non-competitive selection or to appoint a selection committee for further evaluation of qualified firms. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, all proposals shall be rejected and the procurement reinitiated under Section III.E. A competitive environment shall be utilized when feasible and practical.

D. COMPETITIVE SELECTION

1. Appointment and Quorum Requirements of Selection Committee

The Board or County Manager will appoint a selection committee to review and evaluate the statement of qualifications and performance data. A County Commissioner may serve on the selection committee. A majority of the appointed selection committee shall constitute a quorum for all selection transactions.

2. Notification of Need for Service

- a. The Architect/Engineer Evaluation Criteria and scoring sheet attached or a similar scoring sheet shall be the sole means of "short listing" firms who have submitted qualification packages and shall be provided to each interested party prior to their submittal. The selection committee shall review the submittals of the prospective consultants to determine which prospective consultants meet the necessary specific qualifications. Standard Form 330 (combines SF 254 and SF 255) attached may be utilized, or a format outlined in notice, for submittal of qualifications by prospective consultants.
- b. For publicly announced requirements, Purchasing Services, upon notification from the responsible Department/Office Director, shall publish a notice in a newspaper of general circulation in Brevard County and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Electronic posting of competitive opportunities shall be posted on the Brevard County

Purchasing Website and the County's electronic Internet posting site at www.myvendorlink.com and www.DemandStar.com/supplier.

Florida Statutes requires reasonable notice of public meetings, such as selection/negotiating sessions with consultants. The notice will include the committee name and purpose, location of meeting, date and time of meeting, and required statements outlined under Sections 4 of Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC). A copy of the notice of public meeting shall be posted at the Purchasing Services Bulletin Board and County/Purchasing Website and in accordance with Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC).

The Chairman of the selection/negotiations committee will ensure a record of the meeting is maintained, either through a written or recorded method.

3. Certifications of Consultants

- a. Any firm or individual desiring to provide professional services to the County must first be certified by the County as qualified pursuant to law and the regulations of the County. The County shall make a finding that the firm or individual with whom ~~its~~ contracts is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual. The selection committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. Consultant certification criteria shall include but may not be limited to ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads; and volume of work previously awarded, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. Attachment 1 shall be utilized for evaluation and scoring to short list prospective firms for public presentations. The higher the score the more qualified the firm.
- b. The selection committee may observe public presentations and conduct discussions with the firms pertaining to the firms' qualifications, approach to the project, and ability to furnish the required service. Each selection committee member shall rate each firm/individual observed through

personal presentations by assigning the top firm number 1, the second ranked firm number 2, etc. If interviews are not conducted, the ratings applied during the "short-list" phase will determine the rank order of firms for negotiation.

- c. The committee shall maintain this summary listing of the rank order of the firms being evaluated, present their recommendations of the three most qualified firms to the Board if at least three (3) firms respond to the announcement, and request appointment of a negotiating committee to negotiate a contract. Should the County be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the County determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The County shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County shall terminate negotiations. The County shall then undertake negotiations with the third most qualified firm.

E. CONTRACT NEGOTIATION

1. The negotiating committee shall be appointed by the Board. The committee shall be comprised of the County Manager or his designee, Department Directors or designees, and staff members of County government having knowledge and interest in the project requiring professional services. A majority of the negotiating committee shall constitute a quorum for contract negotiations. The negotiating committee shall negotiate a contract with the most qualified firm for professional services at compensation, which is determined to be fair and reasonable. The County Attorney (or his designee) shall be assigned to assist the committee in its negotiations, but shall not be a member of the negotiating committee.
2. For all lump-sum or cost-plus fixed fee contracts exceeding Category 4 as defined in §287.017 F.S., the firm awarded the contract must execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustment shall be made within one (1) year following the end of the contract.
3. Each contract shall contain a prohibition against contingent fees as follows:
"The architect (or registered land surveyor or professional engineer, as applicable) warrant that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer as applicable) to solicit or

secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

F. REJECTIONS OF ALL PROPOSALS

The Board shall reserve the right to reject all proposals and re-issue the notice of need for professional services.

G. PRECEDENCE OF FLORIDA STATUTES AND FEDERAL/STATE GRANT GUIDELINES

In the case of any contradictions, irregularities or ambiguities between the procedures established in this policy and §287.055, Florida Statutes, also known as the Consultants' Competitive Negotiation Act, requirements directed in §287.055, F.S., applicable federal laws, as well as grant guidelines and provisions, or any other applicable Statute shall apply.

H. CONTRACT ADMINISTRATION

1. When a contract has complied with the acquisition process set forth in this policy and has been approved and executed by the Board, the Board delegates authority to the County Manager, or designee, to execute individual amendments, addenda, or task order increases when under \$100,000 and greater than or equal to \$50,000; Assistant County Manager when under \$50,000 and greater than or equal to \$25,000; and Department Director when under \$25,000, when each is within the budgeted amount for the project.
2. Amendments, addenda or task order increase amounts are to be considered individually and not cumulatively for the purpose of determining approval authority.
3. Splitting of amendments, addenda or task order increases to circumvent established approval authority thresholds is prohibited.
4. In the case of continuing consultant contracts, all amendments, addenda, and task order increases shall comply with the limitations for continuing consultant contracts as set forth herein and in §287.055, Florida Statutes.

IV. RESERVATION OF AUTHORITY

The Board reserves the right to amend or modify this policy at any time.

Attest:

Board of County Commissioners
Brevard County, Florida

Formatted: Number of columns: 2

SCOTT ELLIS, CLERK

a

~~Jim Barfield, Chairman~~Bryan Andrew Lober,
Chair

Approved by the Board of County
Commissioners on July ~~21~~12, 2016~~20~~.



TITLE: Acquisition of Consultant Professional Services

POLICY

NUMBER: BCC-26
CANCELS July 12, 2016
APPROVED: July 21, 2020
ORIGINATOR: Purchasing Services
REVIEW: July 21, 2023

I. OBJECTIVE

To prescribe policy for the selection process and acquisition of consultant professional services as defined by § 287.055, Florida Statutes.

II. REFERENCES AND DEFINITIONS

- A. §287.055, Florida Statutes - "Consultants' Competitive Negotiation Act".
- B. §287.017, Florida Statutes - Purchasing Categories, Threshold Amounts.
- C. Board – Brevard County Board of County Commissioners
- D. Design-Build Firm - A firm who holds a current certificate of registration under Chapter 489 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or holds a current certificate of registration under Chapter 481 to practice architect or landscape architecture; or a firm who holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
- E. Design Criteria Package - Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design build contract.
- F. Professional Services - Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping as defined by the laws of the State, or those services performed by an architect, professional engineer, landscape architect, or registered surveyor and mapper

in connection with his/her professional employment or practice.

- G. Agency - The state or state agency, municipality, or political subdivision, a school district or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under §380.06 or §§163.3220-163.3243 of Florida Statutes.
- H. Firm – Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- I. Selection Committee – A committee appointed by the Board to evaluate and rate firms desiring to perform professional services for the County. The committee may be comprised of a County Commissioner in whose district the project is located or designee, County Manager or designee, the Department Director or designee, and staff employees having knowledge and interest in the project.
- J. Negotiating Committee – A committee appointed by the Board to negotiate a contract for professional services. The committee shall be comprised of the County Manager or designee, Department Director or designee, and staff members of County government having knowledge and interest in the project requiring professional services. The County Attorney (or his designee) may be directed to assist the negotiating committee, but shall not be a member of the negotiating committee.
- K. Designee – When used in this Policy, any title such as Board of County Commissioners, County Manager, or Department Director is presumed to include that person's official designee as if the Policy read "Board of County Commissioners or designee."
- L. §286.011, Florida Statutes – Florida Government in the Sunshine Law requiring meetings be open to the public.
- M. Compensation – The amount paid by the Board for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.
- N. Continuing Contract – A contract for professional services entered into in accordance with all the procedures of Reference A., between an agency and a firm, whereby the firm provides professional services to the County for projects in which the estimated construction costs do not exceed \$4,000,000 per project or for study activity when the fee for such professional services does not exceed \$500,000 per study, or for work of a specified nature as outlined in the contract required by the agency with the contract being for a fixed term or with no time limitation except that the contract shall provide a termination clause. Firms providing professional services under continuing contracts shall not be required

to bid against one another.

- O. Negotiate (or any form of the word) – To conduct legitimate arm's length discussions and conferences to reach an agreement on a term or price. The term does not include presentation of flat-fee schedules with no alternatives or discussion.
- P. Project – A study or planning activity described in the public notice under Section III.B. A project may include:
 - 1. A grouping of minor construction, rehabilitation, or renovation activities.
 - 2. A grouping of substantially similar construction, rehabilitation, or renovation projects.
- Q. Brevard County Board of County Commissioners Procurement Policy BCC-25 – Specifies directives for procurement activities.

III. DIRECTIVES

A. PROJECT REQUIREMENTS DETERMINATION

Details of recommended projects shall be submitted to the Board for consideration. If approved, the Board minutes shall reflect approval of the project, method of financing, and appointment of a selection committee.

B. PUBLIC ADVERTISEMENT OF NEED FOR SERVICES AND EXCEPTIONS

All Board approved requirements for professional services shall be publicly advertised as outlined in Procurement Policy BCC-25. The advertisement shall be published once in a newspaper of general paid circulation, which is published at least five (5) days a week in the County. The advertisement shall appear at least fourteen (14) days prior to the last day set for the day of required submittal. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

- 1. Allowable exceptions to public advertisement include:
 - a. Projects involving a Board-certified public emergency.
 - b. There shall be no public advertisement requirement or utilization of the selection process for projects in which the agency is able to reuse existing plans from a prior project. However, public advertisement for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

2. With regard to paragraph 1 above, a competitive environment shall be utilized when feasible and practical.
3. A good faith estimate shall be provided in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

C. NON-COMPETITIVE SELECTION

In cases of planning/study activities estimated to cost is Category Two as defined in §287.017 F.S., or less, the Department Director shall submit the recommendation to the County Manager or his designee to approve the recommendation for non-competitive selection or to appoint a selection committee for further evaluation of qualified firms. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, all proposals shall be rejected and the procurement reinitiated under Section III.E. A competitive environment shall be utilized when feasible and practical.

D. COMPETITIVE SELECTION

1. Appointment and Quorum Requirements of Selection Committee

The Board or County Manager will appoint a selection committee to review and evaluate the statement of qualifications and performance data. A County Commissioner may serve on the selection committee. A majority of the appointed selection committee shall constitute a quorum for all selection transactions.

2. Notification of Need for Service

- a. The Architect/Engineer Evaluation Criteria and scoring sheet attached or a similar scoring sheet shall be the sole means of “short listing” firms who have submitted qualification packages and shall be provided to each interested party prior to their submittal. The selection committee shall review the submittals of the prospective consultants to determine which prospective consultants meet the necessary specific qualifications. Standard Form 330 (combines SF 254 and SF 255) attached may be utilized, or a format outlined in notice, for submittal of qualifications by prospective consultants.
- b. For publicly announced requirements, Purchasing Services, upon notification from the responsible Department/Office Director, shall publish a notice in a newspaper of general circulation in Brevard County and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Electronic posting of competitive opportunities shall be posted on the Brevard County

Purchasing Website and the County's electronic Internet posting site at www.myvendorlink.com and www.DemandStar.com/supplier.

Florida Statutes requires reasonable notice of public meetings, such as selection/negotiating sessions with consultants. The notice will include the committee name and purpose, location of meeting, date and tie of meeting, and required statements outlined under Sections 4 of Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC). A copy of the notice of public meeting shall be posted at the Purchasing Services Bulletin Board and County/Purchasing Website and in accordance with Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC).

The Chairman of the selection/negotiations committee will ensure a record of the meeting is maintained, either through a written or recorded method.

3. Certifications of Consultants

- a. Any firm or individual desiring to provide professional services to the County must first be certified by the County as qualified pursuant to law and the regulations of the County. The County shall make a finding that the firm or individual with whom its contracts is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual. The selection committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. Consultant certification criteria shall include but may not be limited to ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads; and volume of work previously awarded, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. Attachment 1 shall be utilized for evaluation and scoring to short list prospective firms for public presentations. The higher the score the more qualified the firm.
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personal presentations by assigning the top firm number 1, the second ranked firm number 2, etc. If interviews are not conducted, the ratings applied during the “short-list” phase will determine the rank order of firms for negotiation.

- c. The committee shall maintain this summary listing of the rank order of the firms being evaluated, present their recommendations of the three most qualified firms to the Board if at least three (3) firms respond to the announcement, and request appointment of a negotiating committee to negotiate a contract. Should the County be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the County determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The County shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County shall terminate negotiations. The County shall then undertake negotiations with the third most qualified firm.

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2. For all lump-sum or cost-plus fixed fee contracts exceeding Category 4 as defined in §287.017 F.S., the firm awarded the contract must execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustment shall be made within one (1) year following the end of the contract.
3. Each contract shall contain a prohibition against contingent fees as follows: “The architect (or registered land surveyor or professional engineer, as applicable) warrant that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer as applicable) to solicit or

secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

F. REJECTIONS OF ALL PROPOSALS

The Board shall reserve the right to reject all proposals and re-issue the notice of need for professional services.

G. PRECEDENCE OF FLORIDA STATUTES AND FEDERAL/STATE GRANT GUIDELINES

In the case of any contradictions, irregularities or ambiguities between the procedures established in this policy and §287.055, Florida Statutes, also known as the Consultants' Competitive Negotiation Act, requirements directed in §287.055, F.S., applicable federal laws, as well as grant guidelines and provisions, or any other applicable Statute shall apply.

H. CONTRACT ADMINISTRATION

1. When a contract has complied with the acquisition process set forth in this policy and has been approved and executed by the Board, the Board delegates authority to the County Manager, or designee, to execute individual amendments, addenda, or task order increases when under \$100,000 and greater than or equal to \$50,000; Assistant County Manager when under \$50,000 and greater than or equal to \$25,000; and Department Director when under \$25,000, when each is within the budgeted amount for the project.
2. Amendments, addenda or task order increase amounts are to be considered individually and not cumulatively for the purpose of determining approval authority.
3. Splitting of amendments, addenda or task order increases to circumvent established approval authority thresholds is prohibited.
4. In the case of continuing consultant contracts, all amendments, addenda, and task order increases shall comply with the limitations for continuing consultant contracts as set forth herein and in §287.055, Florida Statutes.

IV. RESERVATION OF AUTHORITY

The Board reserves the right to amend or modify this policy at any time.

Attest:

Board of County Commissioners
Brevard County, Florida

SCOTT ELLIS, CLERK

Bryan Andrew Lober, Chair

Approved by the Board of County
Commissioners on July 21, 2020.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.17

7/21/2020

Subject:

2021 RFP #P-1-20-11 Comprehensive Health Plan Services Contract Award Recommendations

Fiscal Impact:

Minimum -\$535,000 Year 1 cost reduction with potential additional savings based on premium and plan design recommendations made by the EBIAC and adopted by the Board.

Dept/Office:

Office of Human Resources / Employee Benefits

Requested Action:

That the Board approve the recommendation of the Office of Human Resources/Employee Benefits and the County's Employee Benefits Insurance Advisory Committee (EBIAC) to award contracts to Cigna Healthcare and Health First Health plan pursuant to the above referenced RFP

Summary Explanation and Background:

The Office of Human Resources/Employee Benefits, through a competitive solicitation process managed by Central Services, conducted a Request for Proposals for Comprehensive Health Plan Services to administer the County's self-funded health plan effective January 1, 2021. The RFP requested options for self-funded administrative services only, integrated Pharmacy Benefit Manager (PBM) services and fully insured health plan options. Proposals were received from Aetna, Cigna, Health First Health Plan (HFHP), Trustmark and UMR. Responses were summarized and presented to the EBIAC on June 4, 2020.

In a unanimous vote, the EBIAC recommended the continued combination of Cigna and HFHP for contract award with guaranteed administrative fees for three (3) years. It is further recommended that Cigna continue to provide PBM services to all health plan participants.

The RFP successfully yielded cost reductions in administrative fees and included enhanced clinical and customer service resources as follows:

1. ASO Fee reduction from current based on proposed and negotiated fees: **-\$535,000 savings Year 1** (Cigna Year 1 ASO fee holiday of -\$426,850 and negotiations with HFHP reducing annual fees by approximately -\$108,000. Cigna ASO holidays in Years 2 and 3 will result in additional savings of \$426,850 over the subsequent two plan years).
2. Cigna to provide a 2nd full-time, onsite clinical resource to assist with wellness and health improvement strategies: **\$135,000 annual plan benefit at no additional cost**
3. Cigna and HFHP to provide enhanced concierge level customer service to improve member interaction and

health plan support: **\$120,000 annual plan benefit at no additional cost**

4. Cigna will provide the option for enhanced clinical plan management through Health Matters Care Management providing more robust plan oversight and precertification estimated to reduce plan costs by 3.6%:
\$119,000 annual plan benefit at no additional cost

Upon the Board's approval of the Comprehensive Health Plan Services RFP recommendations, the EBIAC will meet to develop premium and plan design recommendations for the Board's consideration and approval.

The Office of Human Resources/Employee Benefits requests that the Board review and approve the attached recommendations and authorize the Human Resources Director to execute required contracts and plan documents necessary to secure these services.

Clerk to the Board Instructions:



SELECTION COMMITTEE CONSOLIDATED EVALUATION SCORESHEET

Any questions regarding the content of this notice should be directed to Steven A. Darling, Jr. at (321) 617-7390

MEETING DATE: June 4, 2020 @ 1:00 pm
POSTING DATE: June 4, 2020 THROUGH: June 11, 2020 @ 5:00 pm POSTED BY: Summer Wyllie

▼ Committee Member ▼	Aetna	Cigna Health & Life	Health First	Trustmark Benefits	United Healthcare
Paula Bernston, Clerk		1	2		
Cecilia Burke, Clerk		1	2		
Chris DiSciascio, IAFF Rep.		2	1		
Ron Forknall, BCSO		1	2		
Kika Golan, D2 Office		1	2		
Karen Hirschmiller, Tax Coll.		1	2		
Gregory Pelham, Prop. Appr.		1	2		
Gerard Visco, BOCC HR		1	2		
Patrick Woodard, D4 Office		1	2		
TOTAL POINTS		10	17		
RANKING		1	2		

Aetna, Trustmark Benefits and United Healthcare were unanimously determined non-responsive by the selection committee

Motion made to accept scores as ranked passed unanimously.

Motion to not consider fully insured option passed unanimously.

Motion to recommend to the Brevard County BOCC to move forward with the top two ranked health plan carriers passed unanimously.

Motion to establish a negotiations committee of Gerard Visco, Melissa Powers, and Ron Forknall passed unanimously

Brevard County encourages prompt and fair handling of all complaints and disputes with the business community.
Filing of any disputes and appeals shall be in accordance with procedures specified in bid documents.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.18

7/21/2020

Subject:

In re: National Prescription Opioid Litigation - Approval to file Individual Proof of Claim in Purdue Bankruptcy

Fiscal Impact:

None at this time

Dept/Office:

County Attorney's Office

Requested Action:

Approve Outside Counsel's recommendation to file an Individual Proof of Claim in the Purdue Bankruptcy.

Summary Explanation and Background:

Brevard County has filed a lawsuit In re: National Prescription Opiate Litigation, Case No. 17-md-2804, which is the multi-district litigation against the opioid manufacturers, distributors, and retailers in the District Court for the Northern District of Ohio. Recently, Purdue Pharma, L.P. and its affiliated debtors (collectively Purdue) filed a Chapter 11 Bankruptcy. The deadline to file a proof of claim in the Purdue Bankruptcy is July 30, 2020. The proof of claim may be filed on an individual basis, or it may be filed on a consolidated claims basis, which would authorize the Ad Hoc Committee to act as a facilitator for the claim. The Plaintiff's Executive Committee has recommended that the most effective and protective method is for governmental entities to file an individual proof of claim. Our outside counsel is recommending that filing an individual proof of claim is the best way to protect the County's rights. Request Board approval for outside counsel to file an individual proof of claim in the Purdue Bankruptcy.

Clerk to the Board Instructions:

Return memo to County Attorney's Office

From: [do Amaral, Paulina](#)
To: [Schverak, Christine](#); ["Matthew Mokwa"](#); ["STEVE G. CHARPENITER \(STEVE@BREVARDLAWYER.COM\)"](#)
Cc: [Bentley, Eden](#); [Gomez, Madeline M.](#); ["Mark Dearman \(Mdearman@rgrdlaw.com\)"](#); [Khan, Calvin](#); [Bayne, Jessica](#)
Subject: Opioids - Brevard - Purdue Proof of Claim
Date: Monday, July 13, 2020 12:57:02 PM
Attachments: [image001.gif](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Eden and Christi,

It was a pleasure speaking to you this morning, as always. As we indicated, counsel recommends that the County file an individual Proof of Claim in the Purdue Bankruptcy proceeding in advance of the filing deadline of July 30, 2020. As you know, the County sued Purdue Pharma, LP and associated entities in its original Opioid complaint and Purdue has since filed for Bankruptcy protection.

Per our discussion, because we contend that submitting an individual Proof of Claim is vital to protecting Brevard's rights, we do not believe that joining in the Consolidated Claim to be filed by the Ad Hoc Committee is an appropriate course of action for the County. As we have discussed, the individual Proof of Claim allows us to submit a specific claim amount for Brevard based on the expert analysis provided by the Plaintiffs Executive Committee.

Please let me know if you have any further questions or need any additional information. With your approval, we will proceed to file the individual Proof of Claim on behalf of Brevard.

Thank you.

Paulina do Amaral



Paulina do Amaral
Partner
pdoamaral@lchb.com
t 212.355.9500
f 212.355.9592
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
www.lieffcabraser.com

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Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.19

7/21/2020

Subject:

Appointments to Brevard Workforce Development, Inc. Board of Directors dba CareerSource Brevard

Fiscal Impact:

There is no direct fiscal impact to the Brevard County Board of County Commissioner budget as Brevard Workforce Development Board is a separate organization and has its own budget, finances and accounting. This action will ensure that Brevard County continues to receive approximately \$12,000,000 in employment & training funds which assists in developing the workforce of Brevard to meet the talent pipeline needs for business and industry.

Dept/Office:

CareerSource Brevard

Requested Action:

It is requested that the Brevard County Board of County Commissioners appoint the following to the CareerSource Brevard Board of Directors: Kirsten Patchett, Brian Jaskiewicz, and Mary Jane Brecklin. The term of the appointments are 3 years through June 30, 2023.

It is requested that the Brevard County Board of County Commissioners reappoint the following to the CareerSource Brevard Board of Directors: Daryl Bishop, Colleen Browne, William Chivers and Lynda Weatherman. The term of the reappointments are 3 years through June 30, 2023.

Summary Explanation and Background:

The Brevard County Board of County Commissioners is required by Federal law to approve the appointments and reappointments of members to the CareerSource Brevard Board. The nominees have gone through a nomination process governed by CareerSource Brevard By-Laws and in accordance with the Workforce Innovation and Opportunity Act of 2014 requirements. The process assures that the CareerSource Brevard Board will have a representative mix of gender, ethnic, geographic and business sector diversification serving on the Board of Directors.

These appointments will serve a 3-year term (ending on 6/30/2023) and were approved by CareerSource Brevard's Board of Directors at the May 21, 2020 meeting. These appointments will assist in enhancing the overall goals of the mission of the organization by linking with the various businesses and partner organizations throughout Brevard County.

Contact: Marci Murphy

Phone: 321-394-0507

e-mail: mmurphy@careersourcebrevard.com

Clerk to the Board Instructions:

From: [Marci Murphy](#)
To: [Lewis, Sally A](#); [Abbate, Frank B](#)
Cc: [Marci Murphy](#)
Subject: CareerSource Brevard Board Make-up
Date: Monday, July 13, 2020 4:56:07 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[CSB Bylaws updated 5 21 2020.doc](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Frank and Sally,

I would like to address some questions and concerns that were brought up at the July 7, 2020 Board of County Commissioner's meeting with regards to CareerSource Brevard's Board process, make-up and minority representation on the board.

CSB's Board of Director's composition is defined in the following Federal and State Laws:

USDOL Workforce Innovation and Opportunity Act Section 107(b)(2)(A) & 107(b)(2)(B)
20 CFR 679.320
FS 445.007

49% of our board seats are specified in the laws and statues above. For example, the Director of Area 3 Vocational Rehabilitation is on our board regardless of ethnicity and gender.

51% are business seats (13 members). The nomination process is defined in our by-laws (attached Section C) and approval of board members by CSB's Board of Directors are brought forth for County Commission approval.

Board criteria for the 13 business seats are as follows with consideration of minority and gender representation.

- Local Business Association Recommendations (WIOA Section 107(b)(2)(A))
- Business must have at least 5 employees (Bi-laws Section B)
- There should be representation from all parts of the county
- Two members must represent small business (CFR Title 20 Volume 14 Section 679.320)
- Representatives must be the owner or "C" level employee (WIOA Section 107(b)(2)(A) and CFR Title 20 Volume 14 Section 679.320)
- In-demand Industries need to be represented (i.e. Health Care, Aerospace/Aviation, Manufacturing, IT) (CFR Title 20 Volume 14 Section 679.320)

Of the 13 Business Seats, two are held by African Americans.

Please let me know if you have any further questions or concerns on our current request for approval of CSB Board Member new appointments, re-appointments, or any other process questions. I am happy to address. Thank you.

Regards,
Marci

Marci Murphy | President
297 Barnes Boulevard,
Rockledge, Florida 32955
p.321-394-0700 • f.321-504-
2065
careersourcebrevard.com



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BREVARD WORKFORCE DEVELOPMENT BOARD, INC.

BYLAWS

As Amended May 21, 2020

ARTICLE I. NAME, SERVICE AREA, OFFICE LOCATION

A. NAME

Doing business as CareerSource Brevard (CSB), this organization's legal name is Brevard Workforce Development Board, Inc.

B. SERVICE AREA

The Corporation shall serve Brevard County, Florida, also known as Region 13.

ARTICLE II. MISSION

The Corporation shall facilitate and be the catalyst for workforce development activities that are responsive to the employment and training needs of businesses and job seekers.

ARTICLE III. GOVERNING STATUTES

POWERS OF THE CORPORATION

General Powers:

Except as limited by the Articles or these Bylaws, the Corporation will have and exercise all rights and powers in furtherance of its purpose now or hereafter conferred on not-for-profit corporations under the laws of the state of Florida.

Workforce Powers:

The Corporation will have and exercise all rights and powers granted to regional workforce boards under the laws of the state of Florida and workforce investment boards under Public Law No. 105-220, Title I, Section 117(b) United States Code, and all other applicable federal and state workforce laws, regulations and directors. The Corporation shall always exercise its rights and powers in compliance with all state and deferral governing statutes. To the extent that any provision of the Articles or these Bylaws violate such governing statutes, such provision of all Articles or Bylaws shall be deemed removed from such and the Corporation shall act in accord with the governing statutes.

ARTICLE IV. BOARD OF DIRECTORS

A. DUTIES

The business and affairs of the Corporation shall be the responsibility of the Board of Directors, herein referred to as the Board.

Responsibilities and Authorities:

The Board shall:

Manage and direct the affairs of CSB, protect its interest, determine its direction, advance its mission, goals, and strategies, and supports its programs;

Ensure effective planning and adequate resources, managing resources efficiently;
Authorize an approved budget through Board action;
Ensure ethical and legal behavior;
Elect CSB officers;
Hire and fire the President; and
Approve and oversee execution of the strategic plan.

Further the Board may

Exercise emergency powers allowed by law.

B. NOMINATION AND COMPOSITION OF DIRECTORS

Individuals shall be nominated to serve as Directors on the Board in accordance with governing legislation and policy direction of the Corporation's funders, and CSB procedures. Composition of the Board shall reflect requirements of governing legislation and local charter requirements as amended from time to time. Specifically, business representatives shall represent companies with five (5) or more employees and meet all state and federal requirements. The Corporation will have a minimum of 51% business representation. In the event of conflict among different funders, federal funding requirements shall prevail.

C. APPOINTMENT OF DIRECTORS

These Bylaws, the governing statutes and legislation, and policy direction of the Corporation's funders determine the manner in which Directors are nominated and appointed to the Board. All board member nominees are appointed by the Brevard Board of County Commissioners as recommended to them by the full Board of Directors. Nominations for appointment of Directors to (1) fill vacancies on the Board (2) to serve another term or (3) to increase the number of Directors on the Board shall be held throughout the year with nominations received and vetted through the Executive Committee. Nominees shall be voted on at Board meetings by a majority of Directors then holding office, including those Directors whose term shall expire at such meeting. The Brevard Board of County Commissioners have final approval.

D. MEMBERSHIP ON OTHER COMMITTEES -

The Board Chair (or the President as directed by the Board Chair) shall appoint Directors of the Board to a committee assignment based on Board need and Director interest. At the discretion of the Board Chair, non-Board members may serve on CSB committees, with the exception of the Executive Committee. Only Directors can chair committees. Such non-Board members are not required to file State Financial Disclosures. All Directors or their designated appointee are expected to serve on one committee.

E. TERM OF DIRECTORSHIP

Directors of the Board shall serve three (3) year terms. Prior to expiration of their term, the Executive Committee will review each membership and may ask one or more Board Directors to serve additional term(s) upon the expiration of their current term, subject to Board approval.

F. CONFLICT OF INTEREST

No Director shall cast a vote, or participate in discussion, relating to any procurement or provision of services by that Director or by any organization that the Director represents or is affiliated. Further, no Director shall vote on any matter which would

provide financial benefit to that Director, the Director's employer or members of the Director's immediate family. If the procurement (contract) is with an organization or individual represented on the board of directors, the contract must be approved by a two-thirds vote of the board when a quorum has been established and the board member who could benefit financially from the transaction must abstain from voting on the contract before the vote.

All such procurements must follow this requirement, except for those where the State Workforce Board has allowed other alternatives to be used.

Each Director is subject to the provisions of the governing legislation and policy direction of the CareerSource Brevard's funders.

Unless otherwise stated by the State Workforce Board, all multiple year contracts with a board member or their organization shall be considered approved for all renewal options as indicated with the initial vote on the contract; excluding any breach or withdrawal from the contract under normal contract terms.

Upon appointment to the Board, each Director shall be required to annually sign a Financial and Organizational Disclosure Statement as required by state law.

G. RESIGNATION

If no longer representing the constituency, from which appointed, a Director shall notify the President and Chair of the Board, in writing and resign from the Board. A prospective replacement shall be recommended by the Executive Committee, and such nomination shall be brought to the Board for approval. Board approved nominations shall be presented to the County Commission for ratification.

A Director may resign at any time by giving written notice with an effective date to the President and Chair of the Board. The resigning Director may continue to serve on the Board pending nomination and election of his or her replacement. A prospective replacement shall be recommended by the Executive Committee and such nomination shall be brought to the Board for approval. Board approved nominations shall be presented to the County Commission for ratification. Board vacancies occurring for other reasons follow these same rules.

H. REMOVAL FOR CAUSE

The Board may remove a Director whenever, in its judgment, the best interest of the Corporation would be served. Removal shall be affected by two-thirds (2/3) vote of the Directors attending a called meeting for this purpose.

It is expected that all Directors will attend all scheduled Board and relevant committee meetings. Unless otherwise required by statute, Directors who fail to attend a majority of regularly scheduled meetings based on the annual program year will be subject to removal from the Board unless extenuating circumstances are found and reported to the Board. At Board meetings, designees of Directors shall not be considered as the Director having been in attendance and cannot exercise a vote.

I. VACANCIES

When vacancies occur on the Board, the Executive Committee will bring recommendations to the full Board for candidate approval. Nominations from the floor are permitted. When filling a vacancy, the Executive Committee shall at all times follow the guidelines set forth in the governing legislation and policy direction of the Corporation's funders.

ARTICLE V. MEETINGS

A. NUMBER AND INTERVAL

The Board will hold an annual meeting each calendar year followed by quarterly meetings. The President determines the date, time and place for the meetings.

B. NOTIFICATION OF MEETINGS

The President notifies all Directors of scheduled and special meetings by email at least five (5) days in advance, specifying the date, time, and location of the meeting and its agenda. The President develops and the Board Chair reviews and approves the agenda of all meetings of the Board. The Board shall assure that the Corporation properly notices all meetings in compliance with Florida Government in the Sunshine Law.

C. SPECIAL MEETINGS

A special meeting may be called by the Chair, President or any written request of three Directors in compliance with the Florida Government in the Sunshine Law.

D. PROCEDURES

Business will be conducted to the extent feasible in accordance with Robert's Rules of Order, Newly Revised, as long as they are applicable and not inconsistent with these Bylaws.

E. QUORUM

A quorum is required for all Board of Directors and Standing Committee Meetings when conducting official business that requires an action. A majority of the number of active Directors in good standing shall constitute a quorum for the transaction of business at the Board of Directors and Executive Committee meetings. Designees of Directors who are in attendance at any Board or Executive Committee meeting shall not be considered in establishing a quorum, nor shall such Designees exercise a vote. Designees of Directors and non-board members that serve as members of the Finance, Career Center, Industry Workforce Committees and other Ad Hoc Committees, are considered for a Quorum.

Directors and Committee members are able to participate via teleconference and will count for the quorum and for voting.

ARTICLE VI. OFFICERS OF THE BOARD

A. DESCRIPTION OF BOARD OFFICERS

CareerSource Brevard's Officers are:

Chair
Vice Chair
Treasurer
Past Chair

The term of office for officers is one year. None may serve in the same office for more than two consecutive terms. At the conclusion of the Chair's term, he or she shall serve as immediate Past Chair on the Executive Committee.

B. DUTIES

Duties of the Chair:

The Chair will:

- a. Preside at all meetings of the Board and review the agenda for all Board meetings in consultation with the President.
- b. Make all committee appointments
- c. Will not be assigned to any Committee other than the Executive Committee
- d. Perform all other duties assigned to the Chair under these Bylaws and those usually pertaining to the office of the Chair.

Duties of the Vice Chair:

- a. Preside at all meetings of the Board in the absence of the Chair
- b. Be a member of the Executive Committee
- c. Assist the Chair, when requested, in the performance of the Chair's duties
- d. Perform all such other duties usually pertaining to the office of Vice Chair, including acting as the Chair during the absence or disability of the Chair.

Duties of the Treasurer:

- a. Performs the duties incident to the office and other duties as assigned by the Chair and mutually agreed
- b. Serves on the Finance Committee

C. ELECTION OF OFFICERS OF THE BOARD

If a term is ending, at the last regularly scheduled quarterly meeting prior to the end of the fiscal year, the Board shall elect the Chair, the Vice Chair, and the Treasurer from Directors serving from the Business Sector for the next year from a slate of officer candidates presented/recommended by the Executive Committee. Nominations from the floor will be accepted. The Chair conducts the election, counts the votes and announce the results to the Board.

All officers of the Board shall be elected for a period of two (2) years, and may not be nominated to serve in the same office for consecutive terms. In extenuating circumstances, the Board has the authority, through a majority vote, to modify the term limits of one or more of the officer positions. Officers take office at the first Board meeting following the new fiscal year. If a vacancy occurs, the Executive Committee nominates a Director to fill the vacant seat and the Board votes to approve the individual to fill the remainder of the term, nominations from the floor permitted.

A. NUMBER AND DESCRIPTION

The Officers of the Corporation shall be:

President
Secretary

B. DUTIES

The position of President of the Corporation shall be nominated by the Executive Committee and confirmed by the Board of Directors. The President will be a full-time employee of the Corporation and not a member of the Board of Directors. The President will be reviewed annually by the Executive Committee and the President's salary and bonuses will be set by the Executive Committee. The President may only be terminated upon the recommendation of a majority of the members of the Executive Committee and a majority vote of the Board of Directors. The President will be the chief executive officer of the Corporation and will be responsible for the general and active management of the business and affairs of the Corporation, subject to the direction of the Executive Committee and the Board of Directors.

In the event the President of the Corporation is unable to perform his or her duties as assigned by these Bylaws due to absence, illness or other infirmity, the Executive Committee shall have the authority to designate and appoint an Acting President to serve in a temporary capacity so long as the President remains unable or unavailable to perform his or her duties. The designation and appointment by the Executive Committee shall be ratified by the full Board of Directors by majority vote of a quorum.

The Secretary of the Corporation shall be appointed by the President with approval of the Executive Committee and shall accurately record all meetings and official proceedings of the Board and serve as custodian of Board records, files, and records of the Corporation. The records of the Corporation shall be maintained at the main corporate offices.

ARTICLE VIII.

COMMITTEES

A. STANDING COMMITTEES

The Chair shall appoint members to the Board's committees, according to Board needs and member interest. At the Board Chair's discretion, non-Board members may be appointed to a committee.

The standing committees of the Board shall consist of:

Executive
Finance
Industry Workforce
Career Center

Additional standing committees will be formed by the Chair of the Board in response to governing legislation and policy direction of the Corporation's funders, or the needs of the Corporation.

EXECUTIVE COMMITTEE

The Executive Committee shall consist of the following:
Chair of the Board

Vice Chair of the Board

Treasurer of the Board

Past Chair of the Board

Chair of any standing committee created in response to governing legislation and policy direction of the Corporation's funders, or the needs of the Corporation.

The Executive Committee shall have the authority to exercise those powers of the Board, which may be lawfully delegated and consistent with these Bylaws. The Chair of the Board shall preside over the Executive Committee. A majority of the Executive Committee shall constitute a quorum.

The Executive Committee shall have and may exercise all authority of the Board, except for the following prohibitions:

- May not remove existing officers or Board Directors or elect new officers.
- May not adopt, repeal, or amend these Bylaws or Articles of Incorporation.
- May not adopt or amend the budget or adopt programs except when time requirements clearly do not permit action by the full Board without unduly restricting needed services to the constituency it serves. Under those circumstances, in the discretion of the Chair, the Executive Committee may approve or amend the budget, adopt programs and approve contractors for competitively bid funds from federal, state and local governments, from foundations, and from sector sources. In such cases the Executive Committee shall report its actions and recommendations at the next Board meeting for ratification.

The Executive Committee will also be responsible for the Governance process to include making recommendations to the Board of Directors on the following:

- Bylaws
- Recruitment of new board members, recommendations of additional terms by existing directors and nominations of officers to the board

The Executive Committee shall meet, with reasonable notice, at the call of the Chair, the President or upon receipt of written request by any three Directors of the Executive Committee.

FINANCE

The Finance Committee will be chaired by the Director appointed by the Chair of the Board of Directors and will consist of members appointed by the Chair of the Board. At the Board Chair's discretion, non-board members may be appointed to this committee. The Treasurer can chair this committee, but at a minimum must reside as a member on this committee. The Finance Committee will review and be responsible for the following:

- 1) Ensuring the CSB audit selection process meets the required standards of state and federal policy.
- 2) Ensuring understanding of the Audit report and making sure steps are taken to address any findings.
- 3) Review of all monitoring reports
- 4) Recommendation of the yearly budget for approval by the Board of Directors
- 4) Review Finance and budget reports
- 5) Review any updates to financial policies and procedures

6) Have the authority to direct any recommendations to the Executive Committee

INDUSTRY WORKFORCE

The Industry Workforce Committee will be chaired by a Director appointed by the Chair of the Board and will consist of members appointed by the Chair of the Board. At the Board Chair's discretion, non-board members may be appointed to this committee. The Industry Workforce Committee will identify current and future workforce needs of the business community and create solutions to meet their needs.

CAREER CENTER

The Career Center Committee will be chaired by the Director appointed by the Chair of the Board and will consist of members appointed by the Chair of the Board. At the Board Chair's discretion, non-board members may be appointed to this committee. The Career Center Committee will work to create a Career Center Model that is one of the top choices for career seekers and businesses in Brevard by offering quality workforce products and services.

B. AD HOC COMMITTEES

The Chair of the Board may appoint ad hoc committees on an as-needed basis. Members may include non-Board members, but such ad hoc committees shall be chaired by a Director appointed by the Chair.

ARTICLE IX. FINANCE

A. FISCAL YEAR

The fiscal year of the Corporation shall begin on the first (1st) day of July and end on the thirtieth (30th) day of the month of June of the next calendar year.

B. FINANCIAL ACCOUNTS

All financial records and statements shall be prepared in compliance with generally accepted governmental accounting principles as set forth in Federal and Florida Statutes and funding program guidelines, and as may be required by the governing legislation and policy direction of the Corporation's funders. The financial records shall comply with all contractual or statutory requirements applicable to the Corporation.

C. NEGOTIABLE INSTRUMENTS

The Chair or the President (or his or her designee(s), in writing) shall sign all checks, drafts or other orders for the payment of money.

D. CONTRACTS

All contracts of the Corporation shall be signed by the President, who may from time to time, as needed, and in writing, designate another staff member to enter into any contracts or agreements.

E. LOANS

No loan or evidence of indebtedness or promise to pay shall be contracted on behalf of the Corporation unless authorized by a resolution of the Board of Directors. Such authority may be general or specific.

ARTICLE X. AGENTS, CONSULTANTS, PROFESSIONAL SERVICES

Persons or firms other than officers of the Corporation may from time to time be engaged or employed to assist the Corporation in carrying out its programs and purposes.

ARTICLE XI. STAFF

The Corporation may employ staff necessary to carry out the functions and purposes of the Corporation. The President shall be solely responsible for the selection, hiring, general management, supervision, termination and separation of all staff.

ARTICLE XII. INVESTMENTS

All investment of funds of the Corporation in financial instruments shall be reviewed and approved by the Governance/Finance Committee prior to action by the Board.

ARTICLE XIII. AUDITS

A. AUDITS BY PUBLIC AGENCIES

The Board shall cause to be made available all books and records of the Corporation for examination as required by governing legislation and policy direction of the Corporation's funders

ARTICLE XIV. INDEMNIFICATION

A. VOLUNTEER PROTECTION ACT

The Corporation shall indemnify the Directors, officers and employees to the full extent permitted by the Florida Statutes;

B. INDEMNIFICATION NOT EXCLUSIVE

The foregoing indemnification shall not be deemed exclusive of any other right to which one indemnification may be entitled, both as to action in another capacity while holding such office, and shall inure to the benefit of the heirs, executors and administrators of any such person.

C. INSURANCE AND OTHER INDEMNIFICATION

The Board shall have the power to purchase and maintain such fidelity and bond insurance on such officers, Directors, staff and on behalf of others, to the extent power to do so has been or may be granted by statute and give other indemnification to the extent not prohibited by statute.

ARTICLE XV. AMENDMENT OF BYLAWS

These Bylaws may be altered, amended or repealed by the Board or the Brevard County Commission at any meeting of the CSB Board after seven (7) days written notice that such action is a stated purpose of the meeting. Alteration, amendment or repeal of the Bylaws shall require a majority vote of a quorum of Directors in attendance at the meeting and ratification by the Brevard Board of County Commissioners.

ARTICLE XVI. ENACTMENT PROVISION

These Bylaws shall become effective upon approval by a majority vote of the Directors voting thereon and ratification by the Brevard Board of County Commissioners.

Nondiscrimination

All actions taken by the board shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, other prohibited bases under applicable law or handicap.

Brevard Workforce Development Board (dba CareerSource Brevard)

297 Barnes Blvd., Rockledge, FL 32955

APPOINTMENTS

	RWDB MEMBER'S NAME, ADDRESS & ORGANIZATION	AREA OF REPRESENTATION	QUALIFICATIONS (Position)	NOMINATING ORGANIZATION	DEMOGRAPHIC CHARACTERISTICS	TERM OF APPOINTMENT
1	Kirsten Patchett Embraer in North America 1111 General Aviation Drive Melbourne, FL 32935	Business	Head of Human Resources	Melbourne Regional Chamber of Commerce	FW	___/___/2020 Through 6/30/2023
2	Brian Jaskiewicz Space Coast Intelligent Solutions, Inc. 770 North Drive, Suite B Melbourne, FL 32934	Business	President & CEO	Cocoa Beach Regional Chamber of Commerce	MW	___/___/2020 Through 6/30/2023
3	Mary Jane Brecklin Health First 3470 N. Harbor City Blvd Melbourne, FL 32935	Business	System VP of Human Resource Operations	Cocoa; Beach Regional Chamber of Commerce	FW	___/___/2020 Through 6/30/2023

REAPPOINTMENTS

	RWDB MEMBER'S NAME, ADDRESS & ORGANIZATION	AREA OF REPRESENTATION	QUALIFICATIONS (Position)	NOMINATING ORGANIZATION	DEMOGRAPHIC CHARACTERISTICS	TERM OF APPOINTMENT
1	Daryl Bishop Seacoast National Bank 300 S. Harbor City Blvd Melbourne, FL 32901	Business	Area President	EDC of Florida's Space Coast	MW	7/1/2020 Through 6/30/2023
2	Colleen Browne Keiser University 900 S. Babcock Street Melbourne, FL 32901-1230	Education and Training Provider	Campus President	Melbourne Palm Bay Area Chamber of Commerce	FW	7/1/2020 Through 6/30/2023
3	William Chivers RUSH Construction, Inc. 6285 Vector Space Blvd. Titusville, FL 32780-8040	Business	President	EDC of Florida's Space Coast	MW	7/1/2020 Through 6/30/2023
4	Lynda Weatherman EDC of Florida's Space Coast 6525 Third Street, Suite 305 Rockledge FL 32955	EDC and Business	President	Economic Development Commission	FW	7/1/2020 Through 6/30/2023



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

7/21/2020

Subject:

Petition to Vacate, Re: Public Utility Easement - 2049 Arnold Palmer Drive - "Eagle Point Subdivision" Plat Book 52, Page 37 - Titusville - Wineland Family Trust - District 1

Fiscal Impact:

The petitioners are charged \$640. These fees are deposited in Fund 0002-30265 revenue account for vacatings.

Dept/Office:

Public Works Department - Surveying & Mapping

Requested Action:

It is requested that the Board of County Commissioners (BOCC) conduct a public hearing to consider vacating a public utility easement along the rear line of Lot 4, Block C, "Eagle Point Subdivision" in Section 24, Township 21 South, Range 34 East. If approved, it is requested that the Board authorize the Chairman to sign the attached Resolution approving the vacating.

Summary Explanation and Background:

Florida Statutes, Section 336.09 and Brevard County Article II, Section 86-36, provide a method to the Board of County Commissioners to vacate and abandon unused rights-of-way and easements. The petitioner owns Lot 4, Block C and is requesting the vacating of the 10.00 ft. wide public utility easement along the rear line of lot 4, block C to allow for the construction of a pool. Easement to be vacated contains 800 square feet, more or less. The property is located in Titusville South of Highway 46 and West of N. Carpenter Road.

July 07, 2020, the legal notice was advertised in Florida TODAY informing the public of the date a public hearing would be held to consider the vacating. All pertinent county agencies and public utility companies have been notified. At this time, no objections have been received.

Name: Amber.Holley@brevardfl.gov Phone: Ext. 58346

Clerk to the Board Instructions:

Advertise Approved Resolution Notice and Record Vacating Resolution Documents as one resolution type document which in sequence includes the approved/signed resolution, the proof of publication of the public hearing notice and the proof of publication of the adopted resolution notice.

Resolution 2020 - _____

**Vacating a public utility easement in "Eagle Point" Subdivision, Titusville, Florida, lying in Section 24,
Township 21 South, Range 34 East**

WHEREAS, pursuant to Article II, Section 86-36, Brevard County Code, a petition has been filed by **WINELAND FAMILY TRUST** with the Board of County Commissioners to vacate a public utility and drainage easement in Brevard County, Florida, described as follows:

SEE ATTACHED SKETCH & DESCRIPTION

WHEREAS, the vacating action will in no way affect any private easements which may also be present in the existing public easement(s) or public right-of-way, nor does this action guarantee or transfer title.

WHEREAS, notice of the public hearing before the Board of County Commissioners was published one time in the TODAY Newspaper, a newspaper of general circulation in Brevard County, Florida, prior to the public hearing; and

WHEREAS, the Board finds that vacating the public utility easement will not be detrimental to Brevard County or the public.

THEREFORE BE IT RESOLVED that said public utility easement is hereby vacated; and Brevard County renounces and disclaims any rights in and to said easement. Pursuant to Section 177.101(5), Florida Statutes, the vacating shall not become effective until a certified copy of this resolution is filed in the offices of the Clerk of Courts and recorded in the Public Records of Brevard County.

DONE, ORDERED AND ADOPTED, in regular session, this 21st day of July, 2020 A.D.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

ATTEST:

SCOTT ELLIS, CLERK

Bryan Andrew Lober, Chair

As approved by the Board on:
July 21, 2020



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

7/21/2020

Subject:

Petition to Vacate, Re: Public Utility & Drainage Easement - 843 Heron Road - "Poinsett Shores Second Addition" Plat Book 19, Page 143 - Cocoa - Mira E. Chapman - District 1

Fiscal Impact:

The petitioners are charged \$640. These fees are deposited in Fund 0002-30265 revenue account for vacatings.

Dept/Office:

Public Works Department - Surveying & Mapping

Requested Action:

It is requested that the Board of County Commissioners (BOCC) conduct a public hearing to consider vacating part of two public utility and drainage easements along the common lines of Lots 1 and 2, "Poinsett Shores Second Addition" in Section 34, Township 24 South, Range 35 East. If approved, it is requested that the Board authorize the Chairman to sign the attached Resolution approving the vacating.

Summary Explanation and Background:

Florida Statutes, Section 336.09 and Brevard County Article II, Section 86-36, provide a method to the Board of County Commissioners to vacate and abandon unused rights-of-way and easements. The petitioner owns the south 30.0 feet of Lot 1 and all of Lot 2 and is requesting the vacating of the two 5.00 ft. wide public utility and drainage easements along the common line of lots 1 and 2 to allow for the construction and replacement of a septic tank. Easement to be vacated contains 559 square feet, more or less. The property is located in Cocoa South of W. King Street (Highway 520) and West of I-95.

July 06, 2020, the legal notice was advertised in Florida TODAY informing the public of the date a public hearing would be held to consider the vacating. All pertinent county agencies and public utility companies have been notified. At this time, no objections have been received.

Name: Amber.Holley@brevardfl.gov Phone: Ext. 58346

Clerk to the Board Instructions:

Advertise Approved Resolution Notice and Record Vacating Resolution Documents as one resolution type document which in sequence includes the approved/signed resolution, the proof of publication of the public hearing notice and the proof of publication of the adopted resolution notice.

Resolution 2020 - _____

**Vacating two public utility and drainage easements in "Poinsett Shores Second Addition" Subdivision,
Cocoa, Florida, lying in Section 34, Township 24 South, Range 35 East**

WHEREAS, pursuant to Article II, Section 86-36, Brevard County Code, a petition has been filed by **MIRA E. CHAPMAN** with the Board of County Commissioners to vacate two public utility and drainage easements in Brevard County, Florida, described as follows:

SEE ATTACHED SKETCH & DESCRIPTION

WHEREAS, the vacating action will in no way affect any private easements which may also be present in the existing public easement(s) or public right-of-way, nor does this action guarantee or transfer title.

WHEREAS, notice of the public hearing before the Board of County Commissioners was published one time in the TODAY Newspaper, a newspaper of general circulation in Brevard County, Florida, prior to the public hearing; and

WHEREAS, the Board finds that vacating two public utility and drainage easements will not be detrimental to Brevard County or the public.

THEREFORE BE IT RESOLVED that said public utility and drainage easements are hereby vacated; and Brevard County renounces and disclaims any rights in and to said easements. Pursuant to Section 177.101(5), Florida Statutes, the vacating shall not become effective until a certified copy of this resolution is filed in the offices of the Clerk of Courts and recorded in the Public Records of Brevard County.

DONE, ORDERED AND ADOPTED, in regular session, this 21st day of July, 2020 A.D.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

ATTEST:

SCOTT ELLIS, CLERK

Bryan Andrew Lober, Chair

As approved by the Board on:
July 21, 2020



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

7/21/2020

Subject:

An Ordinance Rescinding Selected Companies' Economic Development Ad Valorem Tax Exemption

Fiscal Impact:

The Companies listed on the Ordinance rescinding their Economic Development Tax Exemption would no longer be eligible to receive an ad valorem tax exemption beginning with the 2020 property tax bill.

Dept/Office:

County Manager

Requested Action:

It is recommended that the Board of County Commissioners adopt the Ordinance rescinding Economic Development Ad Valorem Tax exemptions for selected companies that no longer qualify for the County's program.

Summary Explanation and Background:

The Brevard County Economic Development Ad Valorem Tax Exemption program requires that all companies participating in this program maintain its eligibility each year. The County reviews each company's eligibility through their Annual Report filed each year with the County. The Annual Report provides the following information, tangible personal property added, the type of business, total sales in Florida and elsewhere, and the number employees employed by the company in Brevard County. The County also reviews Federal or State employment information and the information obtained in the records of the Property Appraiser's Office whether an ad valorem tax exemption was applied to the company's real and tangible personal property. In cases where the County and the State have Resolutions approving joint participation with Qualified Targeted Industries (QTIs), the County reviews the Florida Department of Economic Opportunity's records.

During the County's review of the Annual Reports, it was determined that the following companies no longer qualify under the guidelines of the Program as outlines in the County Code of Ordinances because, they have not created the jobs that were reported on their application for the County's Ad Valorem Tax Exemption program:

- Diamondback Manufacturing, LLC, Ordinance No. 2012-08
- East Coast Paper Stock, Inc., Ordinance No. 2012-08
- Project Transom, Ordinance No. 2014-31

Clerk to the Board Instructions:

ORDINANCE NO. 2020- ____

AN ORDINANCE REPEALING ORDINANCES GRANTING CERTAIN AD VALOREM TAX EXEMPTIONS FOR FAILURE TO CONTINUE TO MEET THE CRITERIA FOR SUCH EXEMPTIONS; REPEALING ORDINANCE 2012-11 RELATING TO THE ECONOMIC DEVELOPMENT AD VALOREM EXEMPTION GRANTED DIAMONDBACK CNC, LLC, REPEALING ORDINANCE 2012-08 RELATING TO THE ECONOMIC DEVELOPMENT AD VALOREM EXEMPTION GRANTED TO EAST COAST PAPER STOCK, INC., REPEALING ORDINANCE 2014-31 RELATING TO THE ECONOMIC DEVELOPMENT AD VALOREM EXEMPTION GRANTED TO PROJECT TRANSOM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Diamondback CNC, LLC, Cocoa , Florida, East Coast Paper Stock, Inc., Rockledge, Florida, and Project Transom, Merritt Island, Florida no longer meet the criteria of Section 196.012, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, pursuant to Brevard County Code section 102-189, as follows:

Section 1. Ordinance 2012-11 relating to the economic development ad valorem tax exemption granted to Diamondback CNC, LLC, 1060 Cox Road, Cocoa, Florida is hereby repealed.

Section 2. Ordinance 2012-08 relating to the economic development ad valorem tax exemption grant to East Coast Paper Stock, Inc, Rockledge, Florida is hereby repealed.

Section 3. Ordinance 2014-31 relating to the economic development ad valorem tax exemption grant to Project Transom, 1220 Bertram Way, Merritt Island, Florida is hereby repealed.

Section 4. This ordinance shall take effect immediately upon its adoption and filing as provided by law. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

Section 5. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

Section 6. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other applicable federal, state, or county law, rule, code or regulation, the more restrictive shall apply, unless preempted by law.

Section 7. It is the intention of the Board of County Commissioners that the provisions of this ordinance amend the Code of Ordinances of Brevard County, Florida, as applicable.

DONE, ORDERED AND ADOPTED in Regular Session this _____.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

By: _____
Bryan Andrew Lober, Chair

As Approved by the Board on _July 21, 2020_____



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

7/21/2020

Subject:

Adoption of Proposed FY 2020-2021 Ad Valorem Millages

Fiscal Impact:

Proposed millage rates and associated tax revenues are included in the attachment.

Dept/Office:

Budget Office

Requested Action:

It is requested that the FY 2020-2021 Proposed Millages be approved for the purpose of notification to taxpayers by the Brevard County Property Appraiser. It is also recommended that the County Manager be instructed to complete the Florida Department of Revenue's Certifications of Taxable Value, Forms DR-420.

Summary Explanation and Background:

Florida Truth in Millage (TRIM) requires the Board set the proposed millages for the County's property tax levies no later than August 4, 2020. The Property Appraiser will be advised of the millage rates set at this public hearing through completion of the Florida Department of Revenue's Certification of Taxable Value, Forms DR-420. The millages approved at this meeting will be delivered to the Property Appraiser for inclusion in the TRIM "Notice of Proposed Property Taxes." This Notice provides the taxpayers with their official notice regarding the first public hearing on the FY 2020-2021 budget, and the proposed millages. The Notice also provides taxpayers with the current assessment of their property and the potential revenue generated from the proposed millages on their taxes. The first public hearing on the FY 2020-2021 budget will be held on September 8, 2020 at 5:30 pm.

Once the proposed millages are approved, millages may be reduced or increased at the subsequent public hearings. If the millages are increased, a second notice would be required to be sent to all property owners, at the expense of the taxing authority.

After today's public hearing and the approval of the County's proposed millages, the following steps remain in the FY 2020-2021 millage and budget adoption process.

1. No later than August 4, 2020, the Budget Office will provide executed copies of the

Certification of Taxable Value to the Property Appraiser.

2. On or before August 24, 2020, the Property Appraiser will mail the "2020 Notice of Proposed Property Taxes" to all Brevard County property owners.
3. On September 8, 2020, at 5:30 pm, the Board of County Commissioners will conduct its first public hearing on the millages and budget. The formal adoption of the tentative millages and adoption of the tentative budget will take place at this public hearing.
4. On September 18, 2020, the second public hearing will be advertised in the newspaper.
5. The Board will conduct the final public hearing on the millages and the budget on September 22, 2020 at 5:30 pm. Adoption of the millages and budget by separate resolutions will take place at this final public hearing

Clerk to the Board Instructions:

Maintain information for records retention.

BREVARD COUNTY, FLORIDA, MILLAGES AND TAXABLE PROPERTY VALUES, FY 2020-2021

Certified June 25, 2020

Tax District or Unit		FY 2020-2021	FY 2019-2020	FY 2020-2021	FY 2020-2021	FY 2020-2021	FY 2020-2021	FY 2020-2021	FY 2020-2021
		Rolled-Back Millage Rates	Adopted Millages	Certified Gross Taxable Property Value	New Construction Gross Taxable Property Value	Proposed Millage Rates	Proposed Millage Rates Compared to FY 2019-2020	Proposed Tax Revenues	New Construction Gross Tax Revenues
General Revenue - Countywide		3.6649	3.8196	\$43,680,399,262	\$879,478,491	3.6929	(3.32%)	\$161,307,346	\$3,247,826
Library District	v	0.4250	0.4463	\$43,995,326,861	\$879,478,491	0.4264	(4.46%)	\$18,759,607	\$375,010
Mosquito Control District	v	0.1723	0.1809	\$43,995,326,861	\$879,478,491	0.1728	(4.48%)	\$7,602,392	\$151,974
Fire Control MSTU	v	0.6053	0.6321	\$21,364,694,564	\$499,050,776	0.6141	(2.85%)	\$13,120,059	\$306,467
Recreation District #1 MSTU		0.5315	0.5678	\$5,628,844,651	\$66,020,247	0.5379	(5.27%)	\$3,027,756	\$35,512
Recreation Dist. #4 O & M	v	0.6456	0.6662	\$4,592,611,958	\$78,518,803	0.6346	(4.74%)	\$2,914,472	\$49,828
TICO Airport Authority		-	-	\$18,116,919,765	\$196,905,623	-		\$0	\$0
Law Enforcement MSTU		1.0663	1.1142	\$19,675,621,478	\$439,154,337	1.0832	(2.78%)	\$21,312,633	\$475,692
Road & Bridge Dist. #1 MSTU		0.5997	0.6390	\$3,711,003,574	\$44,248,917	0.6105	(4.46%)	\$2,265,568	\$27,014
Road & Bridge Dist. #2 MSTU		0.2272	0.2376	\$4,633,107,694	\$41,949,017	0.2303	(3.07%)	\$1,067,005	\$9,661
Road & Bridge Dist. #3 MSTU		0.2427	0.2524	\$2,045,893,483	\$14,206,633	0.2468	(2.22%)	\$504,927	\$3,506
Road & Bridge Dist. #4 MSTU		0.2516	0.2600	\$6,037,664,496	\$296,603,418	0.2555	(1.73%)	\$1,542,623	\$75,782
Road & Bridge Dist. #5 MSTU		0.3560	0.3714	\$1,666,071,900	\$18,659,582	0.3618	(2.58%)	\$602,785	\$6,751
Rd & Brdge Dist #4 MSTU N Beaches		0.2377	0.2486	\$672,373,221	\$3,765,056	0.2420	(2.65%)	\$162,714	\$911
Rd & Brdge Dist #4 MSTU MISo.		0.1183	0.1222	\$187,272,459	\$2,435,929	0.1206	(1.31%)	\$22,585	\$294
Environ. Endangered Land ('04)	v	0.0589	0.0619	\$43,995,326,861	\$879,748,491	0.0592	(4.36%)	\$2,604,523	\$52,081
PSJ/CanGroves Recreation MSTU	v	0.3111	0.3234	\$1,675,698,384	\$15,567,729	0.3148	(2.66%)	\$527,510	\$4,901
N. Brevard Special Recreation Dist.	v	0.2110	0.2281	\$3,543,624,031	\$45,450,969	0.2137	(6.31%)	\$757,272	\$9,713
Merritt Island Recreation MSTU	v	0.3049	0.3180	\$3,705,013,898	\$31,059,611	0.3069	(3.49%)	\$1,137,069	\$9,532
S. Brevard Special Recreation Dist.	v	0.2808	0.2938	\$25,451,628,181	\$672,120,628	0.2804	(4.56%)	\$7,136,637	\$188,463
Sub - Total Operating								\$246,375,483	\$5,030,918
Environ. Endangered Land ('04)	v	n/a	0.0804	\$44,252,586,388	\$879,748,491	0.0522	(35.07%)	\$2,309,985	\$45,923
PSJ/CanGroves Recreation MSTU	v	n/a	-	\$1,675,698,384	\$15,567,729	-		\$0	\$0
N. Brevard Special Recreation Dist.	v	n/a	0.5719	\$3,557,358,187	\$45,450,969	0.5211	(8.88%)	\$1,853,739	\$23,684
Merritt Island Recreation MSTU	v	n/a	0.4820	\$3,707,921,478	\$31,059,611	0.4553	(5.54%)	\$1,688,217	\$14,141
S. Brevard Special Recreation Dist.	v	n/a	0.3062	\$25,603,581,921	\$672,120,628	0.2842	(7.18%)	\$7,276,538	\$191,017
Sub - Total Debt Service								\$13,128,479	\$274,765
Total Operating and Debt Service								\$259,503,962	\$5,305,683
Aggregate FY 2019-2020 (CURRENT) Operating Millage						5.8447			
Aggregate FY 2020-2021 ROLLED BACK/FORWARD Operating Millage						5.7176			
Aggregate FY 2020-2021 Estimated Operating Millage						5.6404			
Percent Change from FY 2020-2021 Aggregate ROLLED BACK/FORWARD Operating Millage						-1.35%			
Percent Change from Aggregate FY 2019-2020 (CURRENT) Operating Millage						-3.50%			



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1

7/21/2020

Subject:

Approval Re: Contract for Sale and Purchase from Owners Jennifer Grant, Max Brandes and Teresa Paiva for the Lift Station F02 Reconstruction Project- District 2.

Fiscal Impact:

FY 2019-2020 \$263,000.00; 4153/365310/5610000/516739; Water Resources CIP/WR Sykes Creek WW CIP/Land/F02 Lift Station Land.

Dept/Office:

Public Works Department / Land Acquisition / Utility Services Department

Requested Action:

It is requested that the Board of County Commissioners: 1) approve, accept, and authorize the Chair to execute the Contract for Sale and Purchase, and 2) waive the requirement for a Phase 1 Environmental Site Assessment as required by Administrative Order 37.

Summary Explanation and Background:

The subject property is located in Section 19, Township 24 South, Range 37 East, north of Sykes Creek Parkway, south of HWY 528, west of North Banana River Drive in the Surfside Estates Subdivision on the east side of South Harbor Drive in Merritt Island.

The Brevard County Utility Services Department is planning an improvement project to benefit Lift Station F02. The acquisition of this parcel enables the department to relocate the existing Lift Station F02 that will include numerous upgrades to the system. Additionally, acquisition of this parcel will allow the department to relocate the existing lift station outside of the public right of way. The current location requires field staff to work in the immediate vicinity of the vehicle travel lanes; i.e. between the sidewalk and roadway. The relocation would also reduce the potential for the facility to be struck by errant vehicles.

The zoning/land use for this parcel is RU-1-11/Single Family Residence. Based on the current use as a residential parcel and the intended use by the department, the department requests the Phase 1 Environmental Site Assessment be waived.

Fair market value was established by obtaining a Uniform Residential Appraisal from Callaway and Price, Inc., report dated June 19, 2020, with a value of \$263,000.00.

Staff has verified with Planning and Zoning that there are no restrictions preventing the intended use of the parcel by the Department.

The User Department is in agreeance with this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, please contact Public Works Department (321-617-7202) to make delivery arrangements for the original executed Contract for Sale and Purchase with Exhibit.

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Contract for Sale and Purchase from Owners Grant, Brandes, and Paiva for the Lift Station F02 Reconstruction Project– District 2.

AGENCY: Public Works Department / Land Acquisition / Utility Services Department

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-690-6847 extension 58336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor		_____	<u>7-2-2020</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>7/2/2020</u>

AGENDA DUE DATE: July 14, 2020 for the July 21, 2020 Board meeting

CONTRACT FOR SALE AND PURCHASE

Seller: Jennifer Grant, Max Brandes, Teresa Paiva
1475 South Harbor Drive, Merritt Island, FL 32952

Buyer: Brevard County, Florida, a political subdivision of the State of Florida
2725 Judge Fran Jamieson Way, Viera, Florida 32940

Legal description of property being transferred: See attached Exhibit "A"

The transfer shall be made pursuant to the following terms and conditions and the Standards for Real Estate Transactions, on the reverse side of this contract.

Purchase price: \$263,000.00 (Two Hundred Sixty-Three Thousand Dollars and No/100-----)

Deposit: \$100 to be transferred to an escrow account established and held by the Brevard County Clerk, such deposit to be applied to the purchase price.

Time for acceptance of offer; effective date; facsimile: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before August 25, 2020, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed this offer. A facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as originals.

Title evidence: At least 15 days before closing date, ☐ Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney or ☒ Buyer shall at Buyer's expense obtain ☒ a title search and/or ☐ title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.

Closing Date: This transaction shall be closed and the deed and other closing papers delivered on or before October 26, 2020, unless modified by other provisions of this Contract.

Warranties: The following warranties are made and shall survive closing.

- a. SELLER warrants that there are no parties in occupancy other than Seller.
- b. SELLER warrants there is no hazardous waste or other environmental contamination located in or upon the property being acquired by the County. Seller shall indemnify and defend Buyer from any and all claims or expenses resulting from hazardous waste or environmental contamination located in or upon the property provided such waste or contamination was not placed on the property by the Buyer.
- c. SELLER warrants that he/she has no knowledge of any fact or restriction which would prevent use of the property for dredge material holding area / stormwater retention area purposes.
- d. SELLER hereby represents and warrants to COUNTY that SELLER has not engaged or dealt with any agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby. SELLER hereby acknowledges and covenants that SELLER is solely responsible for any and all commissions due arising out of or connected within the sale or transfer of the property. SELLER hereby indemnifies COUNTY and agrees to hold COUNTY free and harmless from and against any and all liability, loss, costs, damage and expense, including but not limited to attorney's fees and costs of litigation both prior to and on appeal, which COUNTY shall ever suffer or incur because of any claim by any agent, broker or finder engaged by SELLER, including broker, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the

sale and purchase of the property contemplated hereby.

Inspections: The BUYER shall have 60 days after the Brevard County Board of County Commissioners executes the contract within which to complete physical inspection and evaluation of the property for environmental, hazardous materials, developability, access, drainage and subsurface conditions. In the event a Phase I environmental assessment meeting ASTM standards is prepared and environmental issues objectionable to BUYER are detected, SELLER shall 1) take all steps necessary to remove BUYER'S objections prior to the expiration of the 60 day inspection period, if possible or 2) if acceptable to BUYER, SELLER shall allow an additional 90 days to provide adequate time to conduct a Phase II assessment meeting ASTM standards. If the Phase I assessment reveals contamination this agreement may be terminated by BUYER and BUYER may decline to allow SELLER to clean up or to proceed to a Phase II assessment. Likewise, if the Phase II assessment reveals contamination objectionable to BUYER, BUYER may terminate this agreement. Alternatively, BUYER may grant SELLER an additional 90 days to clean up the site after the Phase II assessment, but BUYER is not required to do so. SELLER shall allow the BUYER or its agents reasonable right of entry upon the property for inspection purposes. Before the expiration of the initial 60-day inspection period or the additional 90-day extension for a Phase II assessment, BUYER shall have the right to terminate this agreement with a full refund of any deposits, should the results of the inspection indicate the property cannot be used for its intended purpose or that mitigation of conditions would be required. If clean up after a Phase II assessment is attempted but unacceptable to BUYER, the BUYER shall receive a full refund of its deposit.

Condemnation: This property ☐ is ☒ is not being acquired under threat of condemnation. If so, this agreement includes and settles all issues of full compensation for the property being acquired, including fees and costs.

SELLER shall comply with §196.295, Fla. Stat.

SELLER hereby agrees to provide the necessary information and execute a beneficial interest and disclosure affidavit as required by §286.23, Fla. Stat.

Special Clauses: ☐ See attached addendum

☒ NOT APPLICABLE

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SELLER

Bryan Andrew Lober, Chair

Agenda Item # _____

As approved by the Board July 21, 2020

Date 6/30/2020

Date 6/30/2020

Date 7/2/2020

Date

A. EVIDENCE OF TITLE: A title insurance commitment issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price insuring Buyer's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall immediately be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is, Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) in the title within the time provided therefor. If Seller is unable to remove the defects within the times allowed therefor, Buyer shall either waive the defects or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract

B. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same may have the Real Property surveyed and certified by a registered Florida surveyor. If survey shows encroachment on Real Property or that improvements located on Real Property encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

C. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in the Warranties section of the agreement.

D. LIENS: Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of closing. If Property has been improved or repaired within that time Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at closing of this Contract.

E. TIME PERIOD: Time is of the essence in this Contract.

F. DOCUMENTS FOR CLOSING: Seller shall furnish the deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish closing statement.

G. EXPENSES: Documentary stamps on the deed, if required, and recording of corrective instruments shall be paid by Seller. Buyer will pay for the cost of recording the deed.

H. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Prorations will be made through day prior to occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior

year's tax. If there are completed improvements on the Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.

I. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.


J. PROCEEDS OF SALE; CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. Proceeds of the sale shall be held in escrow by Seller's attorney or by another mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. The escrow and closing procedure required by this Standard shall be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (1993), as amended.

K. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach. In the event of any litigation arising out of this contract, each party shall bear its own attorney's fees and costs. The parties hereby agree to waive trial by jury.

L. CONVEYANCE: Seller shall convey title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

M. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

N. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed.

Reviewed for legal form and content:
 **(Assistant) County Attorney**




Seller's Initial

EXHIBIT A

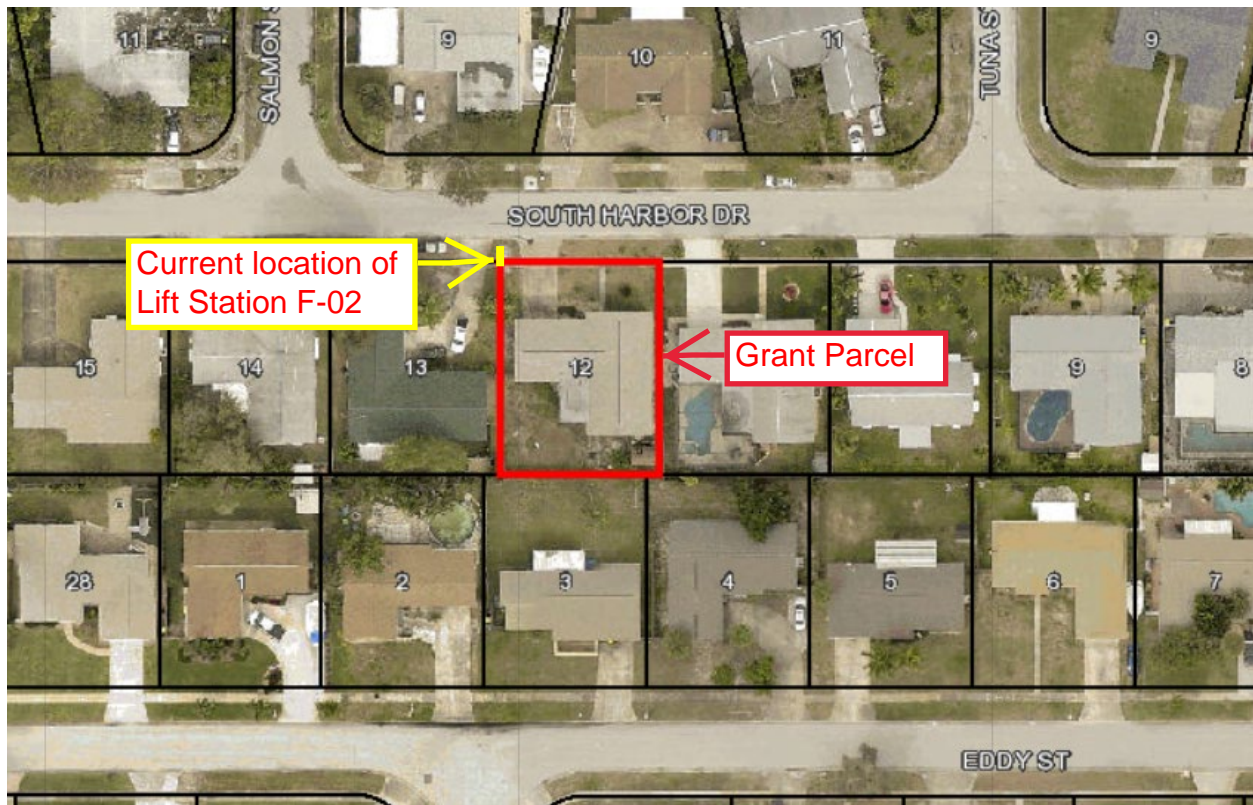
Lot 12, Block 1, Surfside Estates, Unit 3, according to the Plat thereof as recorded in Plat Book 17, Page 108, Public Records of Brevard County, Florida.

LOCATION MAP

Section 19, Township 24 South, Range 37 East District: 2

PROPERTY LOCATION: North of Sykes Creek Parkway, south of HWY 528, west of North Banana River Drive in the Surfside Estates Subdivision on the east side of South Harbor Drive in Merritt Island.

OWNERS NAME: Grant, Brandes, and Paiva



PROPERTY FACT SHEET

PROJECT: Lift Station F02

OWNER: Jennifer Grant, Max Brandes, Teresa Paiva

PARCEL LOCATION: 1475 South Harbor Drive, Merritt Island, FL 32952

PARCEL SIZE: 0.17 acres

ZONING/LANDUSE: 0110-Single Family Residence; RU-1-11

IMPROVEMENTS: Single family residence

TOPOGRAPHY: N/A

FLOOD ZONE: X

TAX PARCEL ID#: 24-37-19-25-1-12

PUBLIC UTILITIES: Utilities available

ASSESSED VALUE: \$192,670.00 (2019 Assessment - Property Appraiser Records)

PROPERTY TRANSACTION: Date: July 9, 2018
(Clerk of the Court Records) Sale amount: \$225,000.00

CALLAWAY APPRAISAL DATE: 06/19/2020

Appraisal Amount: \$263,000.00



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Community Services Group

J.2

7/21/2020

Subject:

Staff Direction, Re: Tourism Development Council's Recommendation to Place a 12-Month Hold On Indian River Lagoon Grant Program and Lori Wilson Park Project Until End of Fiscal Year 2020-2021.

Fiscal Impact:

\$6 million total reduction of expenditures from the Tourism Development Office Beach Improvement, Fund 1442 (\$1 million reduction for the Indian River Lagoon Grant Program and \$5 million reduction for Lori Wilson Park project).

Dept/Office:

Tourism Development Office

Requested Action:

It is requested that the Board of County Commissioners provide staff direction regarding the Tourist Development Council's (TDC) unanimous recommendation to place Indian River Lagoon Grant Program for future grants and the Lori Wilson Park project on hold for 12 months, with the exception of expenses needed for Park maintenance and repairs. This recommendation would remove funding both items from the Tourist Development Office's budget for the Fiscal Year 2020-2021 budget year. Both projects would be brought back to the TDC's Beach Committee and the TDC for review next year for the Fiscal Year 2021-2022 budget.

If the Board agrees with the recommendation of the TDC to suspend spending for Lori Wilson Park, except for repair and maintenance for the next Fiscal Year, it is requested the Board further grant permission to reject all 6 submissions received to RFQ 5-19-12, Redesign of Lori Wilson Park for the reasons cited below.

If the Board rejects the recommendation of the TDC to hold on spending for 12 months for the Lori Wilson Park project, except for repair and maintenance, it is requested the Board grant permission to re-advertise revised Request for Qualifications as listed below and specify the budget level for that project (up to \$5 million minus amount needed for repairs and maintenance):

- Reject all six submissions received in response to RFQ 5-19-12, Redesign of Lori Wilson Park
- Authorize Staff to Revise and Advertise a Request for Qualifications for a Redesign of Lori Wilson Park
- Appoint a Selection and Negotiation Committee Consisting of:
 - o Tourism Development Office Director, Peter Cranis, or Designee
 - o Central Services Director, Steven Darling, or Designee
 - o Facilities Manager, Tim Lawry, or Designee
- Authorize the County Manager, or Designee to Execute any and all resulting Contract(s) and Any Contract Related Documents upon review by the County Attorney's Office, Risk Management, and Purchasing Services
- Authorize the County Manager, or Designee to approve all necessary Budget Change Requests

Summary Explanation and Background:

The Tourist Development Council's Beach Committee reviewed three potential 50-year Beach Plans (attached) that are related to the agreement with the Army Corps of Engineers (attached). Two of the beach plans show that if we continue

with the current anticipated budget and do not adjust the Indian River Lagoon Grants for the future, and the Lori Wilson Park Project, the Beach Fund will be in the negative within the next several years and risk violating project cooperation agreements with the Army Corps of Engineers. This would result in loss of financial support for beach renourishment projects that could amount to multi millions of dollars. For example, in the last 20 years, the Army Corps has helped conduct beach renourishment projects in the total amount of \$218 million. The TDC only had to pay \$26 million of those construction costs. Having the agreement in place and a plan to make sure funds remain available to pay the Army Corps, when needed, are critical to ensure the County continues to receive the same level of support as in the past.

When the Indian River Lagoon Grant Program and Lori Wilson Park project, were included in the Beach Improvement Fund budget by the Board in 2018, it was during a time of unprecedented Tourist Development Tax collection growth. Both the grant program and park project funded as secondary priorities to beach renourishment projects. This was to account for potential reduction in expenditures to the Indian River Lagoon Grant Program and Lori Wilson Park project if a drop in TDT tax revenue were to occur. A drop in Tourist Development Tax Funds has occurred, with a projected decrease of \$5.6 million (33.7%) in Fiscal Year 2020-2021

Regarding the previously issued RFQ, in July of 2019 Purchasing Services issued a Request for Qualifications for qualified firms to complete a redesign of Lori Wilson Park. At the time the RFQ was issued there was an expectation of \$5M in funding for the project and the list of scope requirements was based upon that. The County received six responses to this RFQ. After RFQ submissions were received discussion was held with the City of Cocoa Beach about transferring the park to the City, which placed the awarding of the RFQ Services on hold. As discussions reconvened in 2020, they were again put on hold due to the COVID-19 pandemic.

There are several reasons that Purchasing Services is recommending the Board reject all proposals received and authorize a new advertisement (if the recommended hold on spending is rejected). Those reasons are:

- The new recommendation from the TDC that all spending for the Lori Wilson Park project be suspended for 12 months;
- The substantial amount of time that has passed since these responses were submitted (10 months);
- The potential for a significant adjustment of available funds and the timing in which those funds may be available (immediately or delayed);
- The timeline as outlined in the original RFQ was based on achieving substantial completion by September 2021 in preparation of an October 2021 Air Show (which may now be happening in April 2021); and
- The Scope of Work has changed and is no longer applicable and needs to be revised.

If approved, Purchasing Services will work with The Tourism Development Office to revise the Request for Qualifications and re-advertise in accordance with Policy.

Clerk to the Board Instructions:

Please send Board memo to Director, Tourism Development Office.

July 2020 Version 1 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - o 25% of revised FY 19-20 TDT forecast of \$11.5M (versus previous projections)
 - o 25% of \$11M FY 20-21 TDT budget of \$11M
 - o 20% (versus previous projections) in 21-22
 - o 10% (versus previous projections) in 22-23
 - o Resume **4%** growth from FY 23-24 onward
- IRL grants **\$1M plus \$200K** extension of FY 19-20 grants totalling \$1.2M FY 20-21. \$1M each subsequent year.
- IRL grant KBB beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$5M for FY 20/21.
- Paying Parks & Rec \$196K a Year to maintain Lori Wilson Park remains through FY 21-22.
- Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- South Beaches project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- Interest is calculated Balance Forward x 2%.
- Transfers from Emergency Reserves made to keep cash balances positive in future years.
- 10% of beach TDT revenue tranferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 1: Updated July 10, 2020

TDC Beach Improvement Fund: 50 Year Plan

Constructed Project: Mid (MR), South (SR) , North (NR) Reaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TDT Revenue Forecast)	Interest Revenue ²	Statutory Reduction 5%	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRMO ADMIN EXPENSES: NRMO Staffing and Memberships ²	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL ADMIN	PRIORITY #1: Re-nourishment Expenses (after state and federal match)			PRIORITY #2: Tourism Indian River Lagoon Grants	PRIORITY #3: Lori Wilson Park	PRIORITY #4: Beach Project Reserves	Emergency Reserve Balance	
								Balance Forward x 2%				2% Escalation per Year	2% Escalation per Year		Federal Cost Sharing Agreement - North, Mid and South Reach	South Beaches - South of Spessard Holland Park (includes Dorian)	KBB City of Cocoa Beach and Causeway Litter/Maintenance			10% of Beach Rev if + Cash Balance, - Number Indicates Transfer from Reserves		
MR, SR-NR, LWP	17-18	\$ 10,476,341	\$ 7,004,423	\$ 17,050,384	(\$9,058,562)	\$ 7,991,822	\$ 3,895,736	\$ 69,166		\$ -	\$ 3,039,520	\$ 221,134	\$ 430,380	\$ 651,514	\$ 8,641,428	\$ -	\$ -	\$ -	\$ -	\$ 196,000	\$ -	\$ -
LWP	18-19	7,991,822	8,325,788	16,317,610	(10,293,972)	6,023,638	4,005,980	193,434		0	4,126,374	212,612	127,105	400,598	8,479,854	0	116,289	186,158	111,073	1,000,000	1,000,000	
LWP- MR-SR-SB	19-20	14,514,801	2,917,436	17,432,237	(9,520,228)	7,912,009	2,875,000	195,985	(153,549)	0	0	220,927	551,950	772,877	2,035,157	3,919,267	235,657	361,270	696,000	1,500,000	2,500,000	
NR	20-21	8,065,558	2,765,746	10,831,304	(10,284,629)	546,675	2,750,000	161,311	(145,566)	153,549	0	212,972	447,150	660,122	2,629,850	588,000	235,657	1,200,000	4,696,000	275,000	2,775,000	
	21-22	692,240	7,008,726	7,700,966	(3,111,332)	4,589,634	3,679,551	13,845	(184,670)	145,566	3,500,000	217,231	456,093	673,324	638,395	0	235,657	1,000,000	196,000	367,955	3,142,955	
MR	22-23	4,774,304	4,239,521	9,013,825	(8,493,669)	520,155	4,367,167	95,486	(223,133)	184,670	0	221,576	465,215	686,791	5,958,505	0	235,657	1,000,000	196,000	416,717	3,559,672	
SB	23-24	743,288	4,328,884	5,072,172	(4,515,431)	556,740	4,541,854	14,866	(227,836)	223,133	0	226,008	474,519	700,527	679,248	4,000,000	235,657	1,000,000	(2,100,000)	1,459,672		
	24-25	784,576	8,002,259	8,786,835	(3,130,261)	5,656,574	4,723,528	15,692	(236,961)	227,836	3,500,000	230,528	484,010	714,537	700,644	0	242,727	1,000,000	472,353	1,932,025		
SR-MR	25-26	5,893,535	4,778,823	10,672,358	(11,080,061)	(407,704)	4,912,469	117,871	(251,517)	236,961	0	235,138	493,690	728,828	11,008,507	0	242,727	1,000,000	(1,900,000)	32,025		
NR	26-27	(156,187)	4,850,552	4,694,365	(3,483,413)	1,210,953	5,108,968	(3,124)	(255,292)	251,517	0	239,841	503,564	743,405	986,385	0	242,727	1,000,000	510,897	542,921		
SB	27-28	1,466,245	5,075,519	6,541,764	(6,747,962)	(206,198)	5,313,327	29,325	(267,133)	255,292	0	244,638	513,635	758,273	768,962	4,520,000	242,727	1,000,000	(542,000)	921		
MR	28-29	60,935	5,250,724	5,311,659	(9,193,326)	(3,881,667)	5,525,860	1,219	(276,354)	267,133	0	249,531	523,907	773,438	7,177,161	0	242,727	1,000,000		921		
	29-30	(3,605,313)	5,391,048	1,785,736	(2,857,085)	(1,071,350)	5,746,894	(72,106)	(283,739)	276,354	0	254,521	534,386	788,907	818,170	0	250,009	1,000,000		921		
	30-31	(787,610)	5,662,967	4,875,357	(2,898,636)	1,976,721	5,976,770	(15,752)	(298,051)	283,739	0	259,612	545,073	804,685	843,942	0	250,009	1,000,000		921		
SR-MR- SB	31-32	2,274,771	5,948,269	8,223,041	(20,438,396)	(12,215,355)	6,215,841	45,495	(313,067)	298,051	0	264,804	555,975	820,779	13,260,009	5,107,600	250,009	1,000,000		921		
NR	32-33	(11,902,288)	5,915,107	(5,987,181)	(3,275,327)	(9,262,508)	6,464,474	(238,046)	(311,321)	313,067	0	270,100	567,094	837,194	1,188,124	0	250,009	1,000,000		921		
	33-34	(8,951,186)	6,216,828	(2,734,358)	(3,030,180)	(5,764,538)	6,723,053	(179,024)	(327,201)	311,321	0	275,502	578,436	853,938	926,234	0	250,009	1,000,000		921		
MR	34-35	(5,437,337)	6,539,067	1,101,730	(10,773,587)	(9,671,857)	6,991,975	(108,747)	(344,161)	327,201	0	281,012	590,005	871,017	8,645,061	0	257,509	1,000,000		921		
SB	35-36	(9,327,695)	6,730,845	(2,596,850)	(8,903,039)	(11,499,889)	7,271,654	(186,554)	(354,255)	344,161	0	286,632	601,805	888,437	985,505	5,771,588	257,509	1,000,000		921		
	36-37	(11,145,634)	6,972,628	(4,173,007)	(3,180,264)	(7,353,270)	7,562,521	(222,913)	(366,980)	354,255	0	292,365	613,841	906,206	1,016,549	0	257,509	1,000,000		921		
SR-MR	37-38	(6,986,290)	7,339,031	352,741	(18,153,835)	(17,801,094)	7,865,021	(139,726)	(386,265)	366,980	0	298,212	626,118	924,330	15,971,996	0	257,509	1,000,000		921		
NR	38-39	(17,414,830)	7,439,759	(9,975,070)	(3,631,449)	(13,606,519)	8,179,622	(348,297)	(391,566)	386,265	0	304,176	638,640	942,817	1,431,123	0	257,509	1,000,000		921		
SB	39-40	(13,214,953)	7,830,383	(5,384,570)	(9,864,472)	(15,249,042)	8,506,807	(264,299)	(412,125)	391,566	0	310,260	651,413	961,673	1,115,670	6,521,894	265,234	1,000,000		921		
MR	40-41	(14,836,917)	8,122,824	(6,714,093)	(12,659,323)	(19,373,416)	8,847,079	(296,738)	(427,517)	412,125	0	316,465	664,441	980,907	10,413,182	0	265,234	1,000,000		921		
	41-42	(18,945,898)	8,380,942	(10,564,956)	(3,452,823)	(14,017,779)	9,200,963	(378,918)	(441,102)	427,517	0	322,794	677,730	1,000,525	1,187,065	0	265,234	1,000,000		921		
	42-43	(13,576,677)	8,832,594	(4,744,083)	(3,510,226)	(8,254,309)	9,569,001	(271,534)	(464,873)	441,102	0	329,250	691,285	1,020,535	1,224,457	0	265,234	1,000,000		921		
SR-MR-SB	43-44	(7,789,436)	9,306,174	1,516,738	(28,914,571)	(27,397,833)	9,951,761	(155,789)	(489,799)	464,873	0	335,835	705,111	1,040,946	19,238,650	7,369,741	265,234	1,000,000		921		
NR	44-45	(26,908,034)	9,321,087	(17,586,947)	(4,058,778)	(21,645,725)	10,349,832	(538,161)	(490,584)	489,799	0	342,552	719,213	1,061,765	1,723,822	0	273,191	1,000,000		921		
	45-46	(21,155,141)	9,823,686	(11,331,455)	(3,700,043)	(15,031,498)	10,763,825	(423,103)	(517,036)	490,584	0	349,403	733,597	1,083,000	1,343,852	0	273,191	1,000,000		921		
MR	46-47	(14,514,462)	10,358,884	(4,155,578)	(14,920,777)	(19,076,355)	11,194,378	(290,289)	(545,204)	517,036	0	356,391	748,269	1,104,660	12,542,926	0	273,191	1,000,000		921		
SB	47-48	(18,531,151)	10,707,953	(7,823,197)	(12,157,599)	(19,980,796)	11,642,153	(370,623)	(563,576)	545,204	0	363,519	763,234	1,126,753	1,429,848	8,327,807	273,191	1,000,000		921		
	48-49	(19,417,220)	11,133,520	(8,283,700)	(3,897,367)	(12,181,067)	12,107,839	(388,344)	(585,975)	563,576	0	370,789	778,499	1,149,288	1,474,888	0	273,191	1,000,000		921		
SR-MR	49-50	(11,595,092)	11,742,238	147,146	(25,627,073)	(25,479,927)	12,592,153	(231,902)	(618,013)	585,975	0	378,205	794,069	1,172,274	23,173,412	0	281,387	1,000,000		921		
NR	50-51	(24,861,915)	11,968,670	(12,893,244)	(4,553,491)	(17,446,735)	13,095,839	(497,238)	(629,930)	618,013	0	385,769	809,950	1,195,720	2,076,385	0	281,387	1,000,000		921		
SB	51-52	(16,816,805)	12,619,169	(4,197,636)	(13,530,144)	(17,727,780)	13,619,672	(336,336)	(664,167)	629,930	0	393,485	826,149	1,219,634	1,618,701	9,410,422	281,387	1,000,000		921		
MR	52-53	(17,063,613)	13,132,028	(3,931,585)	(17,633,667)	(21,565,252)	14,164,459	(341,272)	(691,159)	664,167	0	401,354	842,672	1,244,027	15,108,253	0	281,387	1,000,000		921		
	53-54	(20,874,093)	13,597,878	(7,276,215)	(4,272,580)	(11,548,795)	14,731,038	(417,482)														

July 2020 Version 2 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - o 25% of revised FY 19-20 TDT forecast of \$11.5M (versus previous projections)
 - o 25% of \$11M FY 20-21 TDT budget of \$11M
 - o 20% (versus previous projections) in 21-22
 - o 10% (versus previous projections) in 22-23
 - o Resume **4%** growth from FY 23-24 onward
- IRL grants \$500K plus \$200K extension of FY 19-20 grants totalling \$700K FY 20-21. \$500K each subsequent year.
- IRL grant KBB beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$3M for FY 20/21.
- Paying Parks & Rec \$196K a Year to maintain Lori Wilson Park remains through FY 21-22.
- Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- South Beaches project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- Interest is calculated Balance Forward x 2%.
- Transfers from Emergency Reserves made to keep cash balances positive in future years.
- 10% of beach TDT revenue tranferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 2: Updated July 10, 2020

TDC Beach Improvement Fund: 50 Year Plan

Constructed Project: Mid (MR), South (SR) , North (NR) Reaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TDT Revenue Forecast)	Interest Revenue ²	Statutory Reduction 5%	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRMO ADMIN EXPENSES: NRMO Staffing and Memberships ²	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL ADMIN	PRIORITY #1: Re-nourishment Expenses (after state and federal match)			PRIORITY #2: Tourism Indian River Lagoon Grants	PRIORITY #3: Lori Wilson Park	PRIORITY #4: Beach Project Reserves	Emergency Reserve Balance
								Balance Forward x 2%				2% Escalation per Year	2% Escalation per Year		Federal Cost Sharing Agreement - North, Mid and South Reach	South Beaches - South of Spessard Holland Park (includes Dorian)	KBB City of Cocoa Beach and Causeway Litter/Maintenance (3% increases every 5 years)		Maintenance and Repairs (3% increase every 5 years)	10% of Beach Rev if + Cash Balance, - Number Indicates Transfer from Reserves	
MR, SR-NR, LWP	17-18	\$ 10,476,341	\$ 7,004,423	\$ 17,050,384	(\$9,058,562)	\$ 7,991,822	\$ 3,895,736	\$ 69,166		\$ -	\$ 3,039,520	\$ 221,134	\$ 430,380	\$ 651,514	\$ 8,641,428	\$ -	\$ -	\$ -	\$ 196,000	\$ -	\$ -
LWP	18-19	7,991,822	8,325,788	16,317,610	(10,293,972)	6,023,638	4,005,980	193,434		0	4,126,374	212,612	127,105	400,598	8,479,854	0	116,289	186,158	111,073	1,000,000	1,000,000
LWP- MR-SR-SB	19-20	14,514,801	2,917,436	17,432,237	(9,720,228)	7,712,009	2,875,000	195,985	(153,549)	0	0	220,927	551,950	772,877	2,035,157	3,919,267	235,657	561,270	696,000	1,500,000	2,500,000
NR	20-21	7,865,558	2,761,946	10,627,504	(8,084,629)	2,542,875	2,750,000	157,311	(145,366)	153,549	0	212,972	447,150	660,122	2,629,850	588,000	235,657	500,000	3,196,000	275,000	2,775,000
	21-22	2,688,240	7,046,650	9,734,890	(2,611,332)	7,123,558	3,679,551	53,765	(186,666)	145,366	3,500,000	217,231	456,093	673,324	638,395	0	235,657	500,000	196,000	367,955	3,142,955
MR	22-23	7,310,224	4,287,703	11,597,927	(8,013,669)	3,584,258	4,367,167	146,204	(225,669)	186,666	0	221,576	465,215	686,791	5,958,505	0	235,657	500,000	196,000	436,717	3,579,672
SB	23-24	3,809,926	4,387,150	8,197,076	(6,765,617)	1,431,459	4,541,854	76,199	(230,903)	225,669	0	226,008	474,519	700,527	679,248	4,000,000	235,657	500,000	196,000	454,185	4,033,857
	24-25	1,662,362	8,018,937	9,681,299	(2,832,141)	6,849,158	4,723,528	33,247	(237,839)	230,903	3,500,000	230,528	484,010	714,537	700,644	0	242,727	500,000	201,880	472,353	4,506,210
SR-MR	25-26	7,086,997	4,801,499	11,888,495	(11,411,941)	476,554	4,912,469	141,740	(252,710)	237,839	0	235,138	493,690	728,828	11,008,507	0	242,727	500,000	201,880	(1,270,000)	3,236,210
NR	26-27	729,264	4,867,376	5,596,640	(3,185,293)	2,411,347	5,108,968	14,585	(256,178)	252,710	0	239,841	503,564	743,405	242,727	0	242,727	500,000	201,880	510,897	3,747,107
SB	27-28	2,667,525	5,098,343	7,765,868	(7,523,174)	242,694	5,313,327	53,350	(268,334)	256,178	0	244,638	513,635	758,273	768,962	4,520,000	242,727	500,000	201,880	531,333	4,278,439
MR	28-29	511,027	5,259,276	5,770,304	(5,245,206)	525,098	5,525,860	10,221	(276,804)	268,334	0	249,531	523,907	773,438	7,177,161	0	242,727	500,000	201,880	(3,650,000)	628,439
	29-30	801,902	5,474,786	6,276,687	(3,139,711)	3,136,976	5,746,894	16,038	(288,147)	276,804	0	254,521	534,386	788,907	818,170	0	250,009	500,000	207,936	574,689	1,203,129
	30-31	3,425,123	5,743,009	9,168,131	(3,204,249)	5,963,883	5,976,770	68,502	(302,264)	288,147	0	259,612	545,073	804,685	843,942	0	250,009	500,000	207,936	597,677	1,800,806
SR-MR- SB	31-32	6,266,146	6,024,105	12,290,252	(18,346,332)	(6,056,080)	6,215,841	125,323	(317,058)	302,264	0	264,804	555,975	820,779	13,260,009	5,107,600	250,009	500,000	207,936	(1,800,000)	806
NR	32-33	(5,739,022)	6,032,209	293,187	(2,983,263)	(2,690,076)	6,464,474	(114,780)	(317,485)	317,058	0	270,100	567,094	837,194	1,188,124	0	250,009	500,000	207,936		806
	33-34	(2,372,591)	6,341,821	3,969,231	(3,410,422)	558,809	6,723,053	(47,452)	(333,780)	317,485	0	275,502	578,436	853,938	926,234	0	250,009	500,000	207,936	672,305	673,111
MR	34-35	892,589	6,659,336	7,551,925	(10,487,761)	(2,935,836)	6,991,975	17,852	(350,491)	333,780	0	281,012	590,005	871,017	8,645,061	0	257,509	500,000	214,174		673,111
SB	35-36	(2,585,345)	6,858,950	4,273,605	(8,617,213)	(4,343,608)	7,271,654	(51,707)	(360,997)	350,491	0	286,632	601,805	888,437	985,505	5,771,588	257,509	500,000	214,174		673,111
	36-37	(3,982,611)	7,108,725	3,126,114	(2,894,438)	231,677	7,562,521	(79,652)	(374,143)	360,997	0	292,365	613,841	906,206	1,016,549	0	257,509	500,000	214,174		673,111
SR-MR	37-38	605,820	7,483,281	8,089,101	(17,195,009)	(9,105,908)	7,865,021	12,116	(393,857)	374,143	0	298,212	626,118	924,330	15,971,996	0	257,509	500,000	214,174	(673,000)	111
NR	38-39	(8,712,051)	7,605,112	(1,106,939)	(3,345,623)	(4,452,562)	8,179,622	(174,241)	(400,269)	393,857	0	304,176	638,640	942,817	1,431,123	0	257,509	500,000	214,174		111
SB	39-40	(4,052,293)	8,004,473	3,952,180	(9,585,071)	(5,632,891)	8,506,807	(81,046)	(421,288)	400,269	0	310,260	651,413	961,673	1,115,670	6,521,894	265,234	500,000	220,599		111
MR	40-41	(5,211,603)	8,305,705	3,094,102	(12,379,922)	(9,285,820)	8,847,079	(104,232)	(437,142)	421,288	0	316,465	664,441	980,907	10,413,182	0	265,234	500,000	220,599		111
	41-42	(8,848,677)	8,572,790	(275,888)	(3,173,422)	(3,449,310)	9,200,963	(176,974)	(451,199)	437,142	0	322,794	677,730	1,000,525	1,187,065	0	265,234	500,000	220,599		111
	42-43	(2,998,111)	9,033,587	6,035,476	(3,230,825)	2,804,651	9,569,001	(59,962)	(475,452)	451,199	0	329,250	691,285	1,020,535	1,224,457	0	265,234	500,000	220,599		111
SR-MR-SB	43-44	3,280,103	9,516,495	12,796,598	(28,635,170)	(15,838,572)	9,951,761	65,602	(500,868)	475,452	0	335,835	705,111	1,040,946	19,238,650	7,369,741	265,234	500,000	220,599		111
NR	44-45	(15,337,704)	9,540,924	(5,796,780)	(3,785,995)	(9,582,775)	10,349,832	(306,754)	(502,154)	500,868	0	342,552	719,213	1,061,765	1,723,822	0	273,191	500,000	227,217		111
	45-46	(9,080,621)	10,053,102	972,481	(3,427,260)	(2,454,779)	10,763,825	(181,612)	(529,111)	502,154	0	349,403	733,597	1,083,000	1,343,852	0	273,191	500,000	227,217		111
MR	46-47	(1,925,668)	10,598,071	8,672,403	(14,647,994)	(5,975,591)	11,194,378	(38,513)	(557,793)	529,111	0	356,391	748,269	1,104,660	12,542,926	0	273,191	500,000	227,217		111
SB	47-48	(5,417,798)	10,957,107	5,539,309	(11,884,816)	(6,345,507)	11,642,153	(108,356)	(576,690)	557,793	0	363,519	763,234	1,126,753	1,429,848	8,327,807	273,191	500,000	227,217		111
	48-49	(5,768,817)	11,392,840	5,624,022	(3,624,584)	1,999,438	12,107,839	(115,376)	(599,623)	576,690	0	370,789	778,499	1,149,288	1,474,888	0	273,191	500,000	227,217		111
SR-MR	49-50	2,599,061	12,011,927	14,610,989	(25,361,107)	(10,750,118)	12,592,153	51,981	(632,207)	599,623	0	378,205	794,069	1,172,274	23,173,412	0	281,387	500,000	234,034		111
NR	50-51	(10,117,911)	12,248,807	2,130,895	(4,287,525)	(2,156,630)	13,095,839	(202,358)	(644,674)	632,207	0	385,769	809,950	1,195,720	2,076,385	0	281,387	500,000	234,034		111
SB	51-52	(1,511,956)	12,909,962	11,398,005	(13,264,178)	(1,866,172)	13,619,672	(30,239)	(679,472)	644,674	0	393,485	826,149	1,219,634	1,618,701	9,410,422	281,387	500,000	234,034		111
</																					

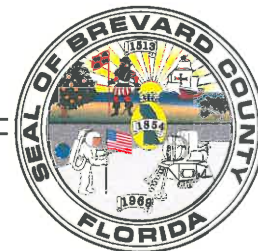
July 2020 Version 3 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - 25% of revised FY 19-20 TDT forecast of \$11.5M (versus previous projections)
 - 25% of \$11M FY 20-21 TDT budget of \$11M
 - 20% (versus previous projections) in 21-22
 - 10% (versus previous projections) in 22-23
 - Resume 4% growth from FY 23-24 onward
- FY 20-21 IRL grants \$500K plus \$200K extension of FY 19-20 grants totalling \$700K.
- IRL grant KBB beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$2M for FY 20/21.
- Paying Parks & Rec \$196K a year to maintain Lori Wilson Park remains for all 50 years.
- Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- South Beaches project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- Interest is calculated Balance Forward x 2%.
- Transfers from Emergency Reserves made to keep cash balances positive in future years.
- 10% of beach TDT revenue tranferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 3: Updated July 10, 2020

TDC Beach Improvement Fund: 50 Year Plan

Constructed Project: Mid (MR), South (SR) , North (NR) Reaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TDT Revenue Forecast)	Interest Revenue ²	Statutory Reduction 5%	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRMO ADMIN EXPENSES: NRMO Staffing and Memberships ²	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL ADMIN	PRIORITY #1: Re-nourishment Expenses (after state and federal match)			PRIORITY #2: Tourism Indian River Lagoon Grants	PRIORITY #3: Lori Wilson Park	PRIORITY #4: Beach Project Reserves	Emergency Reserve Balance
															Federal Cost Sharing Agreement - North, Mid and South Reach	South Beaches - South of Spessard Holland Park (includes Dorian)	KBB City of Cocoa Beach and Causeway Litter/Maintenance				
								Balance Forward x 2%				2% Escalation per Year	2% Escalation per Year							10% of Beach Rev if + Cash Balance, - Number Indicates Transfer from Reserves	
MR, SR-NR, LWP	17-18	\$ 10,476,341	\$ 7,004,423	\$ 17,050,384	(\$9,058,562)	\$ 7,991,822	\$ 3,895,736	\$ 69,166		\$ -	\$ 3,039,520	\$ 221,134	\$ 430,380	\$ 651,514	\$ 8,641,428	\$ -	\$ -	\$ -	\$ 196,000	\$ -	\$ -
LWP	18-19	7,991,822	8,325,788	16,317,610	(10,293,972)	6,023,638	4,005,980	193,434		0	4,126,374	212,612	127,105	400,598	8,479,854	0	116,289	186,158	111,073	1,000,000	1,000,000
LWP- MR-SR-SB	19-20	14,514,801	2,917,436	17,432,237	(9,720,228)	7,712,009	2,875,000	195,985	(153,549)	0	0	220,927	551,950	772,877	2,035,157	3,919,267	235,657	561,270	696,000	1,500,000	2,500,000
NR	20-21	7,865,558	2,761,946	10,627,504	(7,084,629)	3,542,875	2,750,000	157,311	(145,366)	153,549	0	212,972	447,150	660,122	2,629,850	588,000	235,657	500,000	2,196,000	2,775,000	
	21-22	3,688,240	7,065,650	10,753,890	(2,111,332)	8,642,558	3,679,551	73,765	(187,666)	145,366	3,500,000	217,231	456,093	673,324	638,395	0	235,657	0	196,000	367,955	3,142,955
MR	22-23	8,830,224	4,316,583	13,146,807	(7,513,669)	5,633,138	4,367,167	176,604	(227,189)	187,666	0	221,576	465,215	686,791	5,958,505	0	235,657	0	196,000	436,717	3,579,672
SB	23-24	5,860,326	4,426,107	10,286,434	(6,265,617)	4,020,817	4,541,854	117,207	(232,953)	227,189	0	226,008	474,519	700,527	679,248	4,000,000	235,657	0	196,000	454,185	4,033,857
	24-25	4,253,770	8,068,173	12,321,943	(2,332,141)	9,989,803	4,723,528	85,075	(240,430)	232,953	3,500,000	230,528	484,010	714,537	700,644	0	242,727	0	201,880	472,353	4,506,210
SR-MR	25-26	10,230,233	4,861,220	15,091,453	(12,673,188)	2,418,264	4,912,469	204,605	(255,854)	240,430	0	235,138	493,690	728,828	11,008,507	0	242,727	0	201,880	491,247	4,997,457
NR	26-27	2,674,118	4,904,328	7,578,446	(2,685,293)	4,893,153	5,108,968	53,482	(258,123)	255,854	0	239,841	503,564	743,405	986,385	0	242,727	0	201,880	510,897	5,508,354
SB	27-28	5,151,276	5,145,535	10,296,810	(7,023,174)	3,273,636	5,313,327	103,026	(270,818)	258,123	0	244,638	513,635	758,273	768,962	4,520,000	242,727	0	201,880	531,333	6,039,686
MR	28-29	3,544,453	5,316,911	8,861,365	(8,295,206)	566,159	5,525,860	70,889	(279,837)	270,818	0	249,531	523,907	773,438	7,177,161	0	242,727	0	201,880	(100,000)	5,939,686
	29-30	845,996	5,475,623	6,321,620	(2,639,711)	3,681,909	5,746,894	16,920	(288,191)	279,837	0	254,521	534,386	788,907	818,170	0	250,009	0	207,936	574,689	6,514,376
	30-31	3,970,099	5,753,363	9,723,462	(2,704,249)	7,019,214	5,976,770	79,402	(302,809)	288,191	0	259,612	545,073	804,685	843,942	0	250,009	0	207,936	597,677	7,112,053
SR-MR- SB	31-32	7,322,022	6,044,167	13,366,189	(13,346,332)	19,857	6,215,841	146,440	(318,114)	302,809	0	264,804	555,975	820,779	13,260,009	5,107,600	250,009	0	207,936	(6,300,000)	812,053
NR	32-33	337,971	6,147,672	6,485,643	(3,129,710)	3,355,933	6,464,474	6,759	(323,562)	318,114	0	270,100	567,094	837,194	1,188,124	0	250,009	0	207,936	646,447	1,458,500
	33-34	3,679,495	6,456,811	10,136,306	(2,910,422)	7,225,885	6,723,053	73,590	(339,832)	323,562	0	275,502	578,436	853,938	926,234	0	250,009	0	207,936	672,305	2,130,806
MR	34-35	7,565,717	6,786,125	14,351,842	(10,686,959)	3,664,883	6,991,975	151,314	(357,164)	339,832	0	281,012	590,005	871,017	8,645,061	0	257,509	0	214,174	699,198	2,830,003
SB	35-36	4,022,048	6,984,491	11,006,538	(8,844,379)	2,162,160	7,271,654	80,441	(367,605)	357,164	0	286,632	601,805	888,437	985,505	5,771,588	257,509	0	214,174	727,165	3,557,169
	36-37	2,529,764	7,232,460	9,762,224	(3,150,690)	6,611,535	7,562,521	50,595	(380,656)	367,605	0	292,365	613,841	906,206	1,016,549	0	257,509	0	214,174	756,252	4,313,421
SR-MR	37-38	6,992,191	7,604,622	14,596,813	(14,593,009)	3,803	7,865,021	139,844	(400,243)	380,656	0	298,212	626,118	924,330	15,971,996	0	257,509	0	214,174	(2,775,000)	1,538,421
NR	38-39	404,047	7,778,318	8,182,365	(3,663,585)	4,518,780	8,179,622	8,081	(409,385)	400,243	0	304,176	638,640	942,817	1,431,123	0	257,509	0	214,174	817,962	2,356,383
SB	39-40	4,928,165	8,175,102	13,103,267	(9,935,752)	3,167,515	8,506,807	98,563	(430,269)	409,385	0	310,260	651,413	961,673	1,115,670	6,521,894	265,234	0	220,599	850,681	3,207,064
MR	40-41	3,597,783	8,473,083	12,070,867	(12,070,804)	63	8,847,079	71,956	(445,952)	430,269	0	316,465	664,441	980,907	10,413,182	0	265,234	0	220,599	190,882	3,397,945
	41-42	446,014	8,749,389	9,195,403	(3,593,519)	5,601,885	9,200,963	8,920	(460,494)	445,952	0	322,794	677,730	1,000,525	1,187,065	0	265,234	0	220,599	920,096	4,318,042
	42-43	6,062,379	9,205,736	15,268,115	(3,687,725)	11,580,390	9,569,001	121,248	(484,512)	460,494	0	329,250	691,285	1,020,535	1,224,457	0	265,234	0	220,599	956,900	5,274,942
SR-MR-SB	43-44	12,064,902	9,683,406	21,748,308	(22,861,170)	(1,112,861)	9,951,761	241,298	(509,653)	484,512	0	335,835	705,111	1,040,946	19,238,650	7,369,741	265,234	0	220,599	(5,274,000)	942
NR	44-45	(603,208)	9,820,879	9,217,671	(4,320,978)	4,896,693	10,349,832	(12,064)	(516,888)	509,653	0	342,552	719,213	1,061,765	1,723,822	0	273,191	0	227,217	1,034,983	1,035,925
	45-46	5,413,581	10,328,492	15,742,073	(4,003,642)	11,738,430	10,763,825	108,272	(543,605)	516,888	0	349,403	733,597	1,083,000	1,343,852	0	273,191	0	227,217	1,076,382	2,112,308
MR	46-47	12,282,035	10,868,018	23,150,053	(15,267,432)	7,882,621	11,194,378	245,641	(572,001)	543,605	0	356,391	748,269	1,104,660	12,542,926	0	273,191	0	227,217	1,119,438	3,231,745
SB	47-48	8,454,622	11,220,683	19,675,305	(12,549,031)	7,126,273	11,642,153	169,092	(590,562)	572,001	0	363,519	763,234	1,126,753	1,429,848	8,327,807	273,191	0	227,217	1,164,215	4,395,961
	48-49	7,716,836	11,649,067	19,365,903	(4,335,368)	15,030,535	12,107,839	154,337	(613,109)	590,562	0	370,789	778,499	1,149,288	1,474,888	0	273,191	0	227,217	1,210,784	5,606,745
SR-MR	49-50	15,643,643	12,259,774	27,903,418	(26,120,322)	1,783,096	12,592,153	312,873	(645,251)	613,109	0	378,205	794,069	1,172,274	23,173,412	0	281,387	0	234,034	1,259,215	6,865,960
NR	50-51	2,428,347	12,487,185	14,915,532	(5,097,109)	9,818,423	13,095,839	48,567	(657,220)	645,251	0	385,769	809,950	1,195,720	2,076,385	0	281,387	0	234,034	1,309,584	8,175,544
SB	51-52	10,475,644	13,137,726	23,613,370	(14,126,145)	9,487,224	13,619,672	209,513	(691,459)	657,220	0	393,485	826,149	1,219,634	1,618,701	9,410,422	281,387	0	234,034	1,361,967	9,537,511
MR	52-53	10,178,684	13,649,631	23,828,315	(18,284,147)	5,544,168	14,164,459	203,574	(718,402)	691,459	0										



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Tammy.Rowe@brevardclerk.us

July 13, 2016

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item VI.A.1., Project Agreements with Department of the Army for Construction of the Brevard County Shore Protection Project North and South Reaches, and Mid Reach

The Board of Commissioners, in regular session on July 12, 2016, authorized the Chairman to execute Project Partnership Agreement with Department of the Army for construction of the Brevard County Shore Protection Project Mid Reach Segment, substantially in form of Attachment A, with County Attorney and Risk Management approval; authorized the Chairman to execute Amendment No. 2 to the Project Cooperation Agreement with Department of the Army for construction of the Brevard County Shore Protection Project, substantially in the form of Attachment B, with County Attorney and Risk Management approval; authorized the County Manager, or his designee, to approve payment of non-federal cost share as required; and approved any necessary budget change requests.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Finance
Budget

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR
CONSTRUCTION
OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT
MID-REACH SEGMENT

THIS AGREEMENT is entered into this 31st day of August, 2016, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard County Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the North Reach Segment and South Reach Segment of the Brevard County, Florida Shore Protection Project (hereinafter the "Original Project") was authorized by Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, Section 3045(a) of the Water Resources Development Act of 2007, Public Law 110-114, authorized the Secretary to modify the Original Project (hereinafter the "Modified Project") to include the Mid-Reach Segment (hereinafter the "Project", as defined in Article I.A. of this Agreement) upon a determination by the Secretary, following completion of the general reevaluation report, that such shoreline protection is feasible;

WHEREAS, Section 3045(b) of the Water Resources Development Act of 2007 authorized the Secretary to credit the Non-Federal Sponsor for costs it incurred to respond to damages to the Original Project resulting from the Canaveral Harbor Federal Navigation Project;

WHEREAS, the Assistant Secretary of the Army on September 8, 2014 approved the general reevaluation report and determined that the Project, which is the locally preferred plan, is feasible, and with such approval, the credit pursuant to Section 3045(b) of Water Resources Development Act of 2007 is available for crediting towards the non-Federal share of the Project;

WHEREAS, as the costs of the locally preferred plan do not exceed the costs of the National Economic Development Plan, the cost sharing specified in Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), will be applied; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the construction of the locally preferred plan, which includes initial construction and periodic nourishment of the Mid-Reach Segment of the Modified Project, extending approximately 7.8 miles from the Florida Department of Environmental Protection monuments R-75.4 to R-119, and further divided into six reaches, with dune fill and 10-foot extension of the mean high water line (+2.0 feet NGVD 29) plus advance nourishment to maintain the design fill volume in Reaches 1, 4, and 5; dune fill and 20-foot extension of the mean high water line plus advance nourishment to maintain the design fill volume in Reaches 2 and 3; a dune fill consisting of advance nourishment in Reach 6; rehabilitation of the Poseidon Dredged Material Management Area at Port Canaveral to facilitate stockpiling of sand; dredging material at 6-year intervals from Canaveral Shoals with placement and storage in the Poseidon Dredged Material Management Area; construction of nearshore reefs for environmental mitigation and associated monitoring; and periodic nourishment estimated to occur every 3 years, as generally described in the Brevard County, Florida, Hurricane and Storm Damage Reduction Project, Mid-Reach Segment, Final Integrated General Reevaluation Report and Supplemental Environmental Impact Statement, dated August 2010, revised April 2011, with an Addendum dated April 2014, and the Report of the Director of Civil Works, dated May 16, 2014, and approved by the Assistant Secretary of the Army (Civil Works) on September 8, 2014 (hereinafter the "Decision Document").

B. The term "periodic nourishment" means the placement of suitable beach berm material after the initial construction of the Project at appropriate intervals during the 50 year period of Federal participation that begins on the date of initiation of construction of the Project, as generally described in the Decision Document.

C. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government's costs and the Non-Federal Sponsor's creditable contributions pursuant to the terms of the Design Agreement executed on October 16, 2014; the costs of historic preservation activities except for data recovery for historic properties; the Government's costs of engineering, design, and construction; the Government's supervision and administration costs; the Government's costs of monitoring; the Non-Federal Sponsor's creditable costs for providing real property

interests, disposal area improvements, and relocations and for providing in-kind contributions. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; for dispute resolution; for participation in the Project Coordination Team; for audits; for betterments; or the Non-Federal Sponsor's cost of negotiating this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material disposal areas. Acquisition of real property interests may require the performance of relocations.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "disposal area improvements" means the improvements required on real property interests to enable the ancillary disposal of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

G. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer"), although the remainder of the Project is not yet complete.

H. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Engineer for South Atlantic Division. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

I. The term "betterment" means a difference in the construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element.

J. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

K. The term "Section 3045(b) credit" means the credit, authorized by Section 3045(b) of the Water Resources Development Act of 2007, in the amount of \$8,576,176,

that will be applied towards the non-Federal cost share for initial construction of the Project.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute, in accordance with the provisions of this paragraph, 35 percent of the construction costs for initial construction of the Project, and 50 percent of the construction costs for periodic nourishment, allocated by the Government to coastal storm risk management and 100 percent of the construction costs allocated by the Government to beach improvements with exclusively private benefits.

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, disposal area improvements, and relocations required for construction, operation, and maintenance of the Project.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

3. For initial construction, and for each cycle of periodic nourishment, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2. of this Article and the Section 3045(b) credit, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year. No later than 30 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.

4. No later than August 1st prior to each subsequent fiscal year during initial construction, or a cycle of periodic nourishment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications,

including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

E. When the District Engineer determines that the initial construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work. The Government's undertaking of a cycle of periodic nourishment has no effect on the Non-Federal Sponsor's continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project. If a cycle of periodic nourishment changes those responsibilities, the Non-Federal Sponsor, at no cost to the Government, shall commence any additional responsibilities upon notification from the Government. Nothing in this paragraph is intended to affect the eligibility under Public Law 84-99 (33 U.S.C. 701n).

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to

the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

G. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of initial construction of the Project. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and storm damage risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of protection the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. For shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

M. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.

N. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

O. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

P. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in the construction costs that are cost shared but shall be included in calculating the overall Federal cost of the Project. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in the construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

Q. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and approval by the Division Engineer for the South Atlantic Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

ARTICLE III - REAL PROPERTY INTERESTS, DISPOSAL AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91- 646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire

the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the disposal area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests, disposal area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct disposal area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, disposal area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the disposal area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests, disposal area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any clean up and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation

payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, DISPOSAL AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement), disposal area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a biannual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement), an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. For crediting purposes, appraisals of interests in lands subject to shore erosion acquired from private parties after the effective date of this Agreement must consider special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (2000).

(1) Date of Valuation. Except for interests in lands subject to shore erosion, the fair market value of real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent

to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

(1) If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. Except as provided in paragraph C.1.b.(2) below, the fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

(2) For interests in lands subject to shore erosion, the Government will credit the amount of the court award or stipulated settlement only to the extent that the court award or stipulated settlement considered special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (2000). If the court award or stipulated settlement did not consider special benefits, fair market value for crediting purposes shall be the limited to the amount determined by an appraisal that considers special benefits.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for construction, operation, and maintenance of the Project within a five year period preceding the effective date of this Agreement, or at any time after the

effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Disposal Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of disposal area improvements required for construction, operation, and maintenance of the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any disposal area improvements required for construction, operation, and maintenance of the Project. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-

kind contributions that are integral to construction, operation, and maintenance of the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or another segment of the Modified Project; or for costs associated with betterments or beach improvements with exclusively private benefits.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs allocated to coastal storm risk management for initial construction are projected to be \$49,613,121, with the Government's share of such costs projected to be \$32,248,529 and the Non-Federal Sponsor's share of such costs projected to be \$17,364,592. For initial construction, the estimated credit for real property interests is \$3,980,000, and the estimated credit for in-kind contributions is \$0. For initial construction, Section 3045(b) credit in the amount of \$8,576,176 will reduce the estimated funds to be provided by the

Non-Sponsor to \$4,808,416, which will increase the estimated Federal funds required for initial construction to \$40,824,705. The construction costs allocated to coastal storm risk management for periodic nourishment are projected to be \$437,326,292, with the Government's share of such costs projected to be \$218,663,146, and the Non-Federal Sponsor's share of such costs projected to be \$ 218,663,146. Construction costs of beach improvements with exclusively private benefits are projected to be \$6,573,879 for initial construction and \$57,386,708 for periodic nourishment; and the costs for betterments are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. While undertaking initial construction and periodic nourishment, the Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, disposal area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs allocated to coastal storm risk management by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs allocated to coastal storm risk management as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon conclusion of initial construction and each cycle of periodic nourishment, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's

responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If such final accounting determines that the Non-Federal Sponsor's credit for real property interests, disposal area improvements, and relocations combined with credit for in-kind contributions exceed its share of the construction costs for the Project, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

F. If there are beach improvements with exclusively private benefits; or real property interests, disposal area improvements, relocations, or betterments provided on behalf of the Non-Federal Sponsor; the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the overall Federal cost of the Project.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or

independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Director
Brevard County Natural Resources Management Department
2725 Judge Fran Jamieson Way; A-219
Viera, Florida 32940

If to the Government:

District Engineer
Jacksonville District
U.S. Army Corps of Engineers

Physical Address:

701 San Marco Blvd.
Jacksonville, Florida 32207-8175

Mailing Address:

P.O. Box 4970
Jacksonville, Florida 32232-0019

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.


ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES


Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BREVARD COUNTY, FLORIDA

BY: 
Jason A. Kirk, P.E.
Colonel, U.S. Army
District Engineer

BY: 
Jim Barfield
Chairman
Board of County Commissioners
As approved by the Board on July 12, 2016

DATE: 31 AUG 2016

DATE: 8/30/16

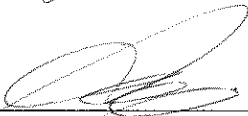
ATTEST: 
Scott Ellis, Clerk

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, Mid-Reach Segment, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

30th day of August 2016



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING

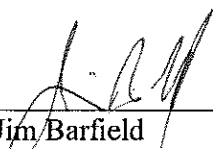
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Jim Barfield
Chairman
Brevard County Board of County
Commissioners

DATE: 8/30/16

AMENDMENT NO. 2
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR CONSTRUCTION OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT

This Amendment No. 2 is entered into this 31st day of August, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard County Board of County Commissioners.

WITNESSETH THAT:

WHEREAS, on April 20, 2000, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the Phase I (north reach) and Phase II (south reach) segments of the Brevard County, Florida Shore Protection Project (hereinafter the "Project");

WHEREAS, on August 8, 2013, the Agreement was amended to afford a credit towards the non-Federal share of the Project in the amount of \$8,576,176 for costs incurred by the Non-Federal Sponsor to respond to damages to the Project resulting from the Canaveral Harbor Federal Navigation Project; and

WHEREAS, in lieu of affording the credit toward the South Reach segment of the Project, the parties acknowledge and agree that the full amount of the aforementioned credit will be applied to the Mid-Reach Segment of the Brevard County, Florida Shore Protection Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to further amend the Agreement as follows:

1. Replace the fourth through the eighth WHEREAS clauses with the following:

"WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the Project;"

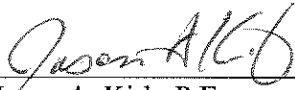
2. Revise Article II.G.1.b. by deleting "(b) the credit to be afforded in accordance with paragraph G.2. of this Article; and (c)" and inserting "and (b)".

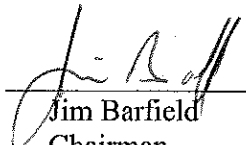
3. Revise Article II.G.1.c. by deleting "the credit afforded in accordance with paragraph G.2 of this Article; (c)" and by deleting "(d)" and inserting "(c)".
4. In Article II.G., delete paragraph 2. in its entirety and renumber paragraph 3. as paragraph 2.
5. In Article VI.F.2., delete "subject to the availability of funds and as limited by Article II.G.2. of this Agreement, shall refund" and insert "subject to the availability of funds, shall refund".
6. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

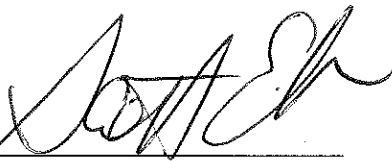
BREVARD COUNTY, FLORIDA

BY: 
Jason A. Kirk, P.E.
Colonel, U.S. Army
District Engineer

BY: 
Jim Barfield
Chairman
Board of County Commissioners
As approved by the Board on July 12, 2016

DATE: 31 AUG 2016

DATE: 8/30/16


ATTEST: 
Scott Ellis, Clerk

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 2 to the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 2, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Amendment No. 2 on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

30th day of August 2016.



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING

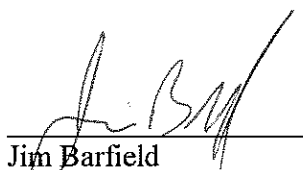
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Jim Barfield
Chairman
Brevard County Board of County
Commissioners

DATE: 8/30/16

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR CONSTRUCTION OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this 20th day of April, 2000, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the Brevard County, Florida Shore Protection Project at Brevard County, Florida was authorized by Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, as required by Section 101(b) of the Water Resources Development Act of 1996, Public Law 104-303, the final report for this project was completed before 31 December 1996;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Brevard County, Florida Shore Protection Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Brevard County, Florida Shore Protection Project and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of two separable elements of shore protection along the coast of Brevard County, Florida consisting of a Phase I (north reach) and a Phase II (south reach) more particularly described as follows:

Phase I (north reach)--The Phase I (north reach) extends from the south jetty at Canaveral Harbor south to Patrick Air Force Base (approximately 9.4 miles) and consists of constructing a design berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to a berm break, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor. The berm break is defined as the Government's January 1995 (pre-sand bypass) mean high water survey from the south jetty at Port Canaveral south to reference monument R14 and south of reference monument R14 as the erosion control line. The initial construction will consist of placement of an estimated 2.5 million cubic yards of fill with 1.98 million cubic yards of material being for initial restoration and a 0.516 million cubic yards of fill as advance nourishment. Periodic nourishment is anticipated as needed every six years. The project life is 50 years from the date of completion of initial construction.

Phase II (south reach)--The Phase II (south reach) extends from the Florida Department of Environmental Protection Monument R-119 south to Spessard Holland Park (approximately 3.4 miles) and consists of constructing a design berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to the berm break, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor. The berm break is defined as the erosion control line. The initial construction will consist of placement of an estimated 1.7 million cubic yards of fill with 1.04 million cubic yards of material being for initial restoration and a 0.6 million cubic yards of fill as advance nourishment. Periodic nourishment is anticipated as needed every six years. The project life is 50 years from the date of completion of initial construction.

The Project is as generally described in the "Brevard County, Florida Shore Protection Project Review Study, Feasibility Report with Final Environmental Impact Statement",

dated September 1996 and approved by the Chief of Engineers on December 23, 1996 as modified by the Limited Reevaluation Report dated October 1999 and approved by the Chief, Planning and Environmental Division, Directorate of Engineering and Technical Services, South Atlantic Division on January 26, 2000 (hereinafter the "Report").

B. The term "initial construction" shall mean the restoration of a beach with a protective berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to the erosion control line, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor as generally described in the Report referenced in paragraph A of this Article.

C. The term "periodic nourishment" shall mean the placement of suitable beach material within the areas of initial construction, or any functional portion of the initial construction, as generally described in the Report referenced in paragraph A. of this Article.

D. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; costs of audit in accordance with Article X of this Agreement and those dikes and other construction works necessary to promote placement of the beachfill material. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

E. The term "total costs of initial construction" shall mean that portion of total project costs allocated by the Government to initial construction.

F. The term "total costs of periodic nourishment" shall mean that portion of total project costs allocated by the Government to periodic nourishment.

G. The term "financial obligation for initial construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated

material disposal areas, that results or would result in a cost that is or would be included in total costs of initial construction.

H. The term "financial obligation for periodic nourishment" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total costs of periodic nourishment.

I. The term "non-Federal proportionate share" with respect to initial construction, shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.D. of this Agreement to total financial obligations for initial construction, as projected by the Government. The term shall mean, with respect to periodic nourishment, the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.G. of this Agreement to total financial obligations for periodic nourishment, as projected by the Government.

J. The term "period of initial construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Jacksonville District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

K. The term "authorized periodic nourishment period" shall mean 50 years from the completion of the period of initial construction, the authorized duration for Federal participation in periodic nourishment for the Project. The Phase I (north reach) and Phase II (south reach) may have different commencement of initial construction dates.

L. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

M. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

N. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

O. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in

advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

P. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including periodic nourishment at such times during the authorized periodic nourishment period as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, in the event any award of any contract for construction of the Project would exceed 125 percent of the Government estimate prepared for that construction contract solicitation, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

4. As of the effective date of this Agreement, \$5,000,000 of Federal funds have been appropriated for the Project. The Government makes no commitment to seek additional Federal funds for the Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project shall not exceed the total amount of Federal funds that heretofore have been appropriated and hereafter may be appropriated or otherwise made available for the Project. In the event that funds sufficient to meet the Federal share of funds required to continue construction of the Project in the then-current or upcoming fiscal year are not made available for the Project, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of the total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor pursuant to paragraph D. or paragraph G. of this Article as a contingency to pay the costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsor may request the Government to accomplish betterments during the period of initial construction. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the

functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 35 percent of the total costs of initial construction assigned by the Government to hurricane and storm damage reduction, plus 50 percent of total costs of initial construction assigned by the Government to recreation, plus 100 percent of the total costs of initial construction assigned by the Government to privately owned shores (where the use of such shores is limited to private interests) (hereinafter the "non-Federal share of total costs of initial construction") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the initial construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the initial construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1. of this Article and Articles V, X, and XV.A. of this Agreement will be less than the non-Federal share of initial construction, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to non-Federal share of total costs of initial construction.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.1. and D.2. of this Article and of the Non-Federal Sponsor's contributions attributable to initial construction under Articles V, X, and XV.A. of this Agreement has exceeded the non-Federal share of total costs of initial construction, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of total costs of initial construction. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the period of initial construction. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be

consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. Upon completion of the period of initial construction, the Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. For each iteration of periodic nourishment, the Non-Federal Sponsor shall contribute 35 percent of the total costs of periodic nourishment assigned by the Government to hurricane and storm damage reduction, plus 50 percent of total costs of periodic nourishment assigned by the Government to recreation, plus 100 percent of the total costs of periodic nourishment assigned by the Government to privately owned shores (where the use of such shores is limited to private interests) (hereinafter the "non-Federal share of total costs of periodic nourishment") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the iteration of periodic nourishment and shall perform or ensure performance of all relocations that the Government determines to be necessary for the iteration of periodic nourishment.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph G.1. of this Article and of the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X, and XV.A. of this Agreement will be less than the non-Federal share of total costs of periodic nourishment, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.E. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to non-Federal share of total costs of periodic nourishment.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs G.1. and G.2. of this Article and of the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X, and XV.A. of this Agreement has exceeded the non-Federal share of total

costs of periodic nourishment, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of total costs of periodic nourishment. After such a determination, the Government, in its sole discretion, may provide any remaining periodic nourishment lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining periodic nourishment relocations on behalf of the Non-Federal Sponsor.

H. The Government shall assign all costs included or to be included in total project costs and all contributions provided by the Non-Federal Sponsor to hurricane and storm damage reduction, to recreation, or to protecting undeveloped private lands and other privately owned shores which do not provide public benefits.

I. The Non-Federal Sponsor may request the Government to accomplish betterments during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

J. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

K. For each iteration of periodic nourishment, the Government shall perform a final accounting in accordance with Article VI.F. of this Agreement to determine the contributions provided by the Non-Federal Sponsor toward the total costs of periodic nourishment and costs due to betterments in accordance with paragraphs G., I., and J. of this Article and Articles X and XV.A. of this Agreement and to determine whether the

Non-Federal Sponsor has met its obligations under paragraphs G., I., and J. of this Article.

L. In the event the completed initial construction, or any functional portion of the initial construction, is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds and Article II.A. of this Agreement, shall place suitable beach fill material within the area of the completed initial construction, or functional portion of the initial construction, as periodic nourishment. The costs of such placement shall be included in the total costs of periodic nourishment and cost shared in accordance with Article II.G. of this Agreement. In the event an uncompleted portion of the initial construction is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds, shall place suitable beach fill material with the area of uncompleted initial construction as initial construction. The costs of such placement shall be included in the total costs of initial construction and cost shared in accordance with Article II.D. of this Agreement. Nothing in this paragraph shall preclude the Government from using Public Law 84-99 to accomplish any emergency repair and restoration of work of the completed initial construction or a functional portion of the initial construction.

M. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total costs of initial construction or the non-Federal share of total costs of periodic nourishment under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

N. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

O. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

P. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

Q. The Non-Federal Sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation and maintenance of the project.

R. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure conditions of public ownership and use of the shore upon which the amount of Federal participation is based.

S. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW
91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the initial construction, operation or maintenance of the Project set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the periodic nourishment, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each contract for initial construction or periodic nourishment, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the initial construction, periodic nourishment, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall provide all improvements required for initial construction set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall provide all improvements required for the periodic nourishment as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction or

periodic nourishment, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations required for the initial construction as set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall perform or ensure performance of all relocations required for the periodic nourishment as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the non-Federal share of total costs of initial construction or the non-Federal share of total costs of periodic nourishment.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total costs of initial construction for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for initial construction, operation, and maintenance of the Project pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for initial construction, operation, and maintenance of the Project pursuant to Article III of this Agreement. The Non-Federal Sponsor shall receive credit toward the non-Federal share of total costs of periodic nourishment for the value of additional lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for periodic nourishment of the Project pursuant to Article III of this Agreement, and for the value of the additional relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for periodic nourishment of the Project pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of

disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of

this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of initial construction or during the authorized periodic nourishment period, as appropriate. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of initial construction or the authorized periodic nourishment period, as appropriate, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the initial construction or functional portions of the initial construction; final inspection of each iteration of periodic nourishment or functional portion of each iteration of periodic nourishment; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project

Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total costs of initial construction, total costs of periodic nourishment and costs due to betterments. By October 1st of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs of initial construction, of total costs of periodic nourishment, of total costs due to betterments during the period of initial construction or during the authorized periodic nourishment period, as appropriate, of the maximum amount of total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of the non-Federal share of total costs of initial construction, of the non-Federal share of total costs of periodic nourishment, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., II.E., II.G., II.I., and II.J of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$253,940,000, total costs of initial construction are projected to be \$45,256,000, total costs of periodic nourishment are projected to be \$208,684,000, the Non-Federal Sponsor's contribution required under Article II.D.2. of this Agreement is projected to be \$16,599,000, and the Non-Federal Sponsor's cash contribution required under Article II.G.2. of this Agreement is projected to be \$76,035,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required under Article II.D.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 120 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for initial construction, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction through the first fiscal year of initial construction, including the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction. Not later than such scheduled date, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-

Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or provided an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of the period of initial construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction; and (b) the non-Federal proportionate share of financial obligations for initial construction as they are incurred during the period of initial construction.

4. If at any time during the period of initial construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for initial construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., II.E., II.I., or II.J. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of initial construction or termination of this Agreement during the period of initial construction, and upon resolution of all relevant claims and appeals relevant to initial construction, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of initial construction, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the period of initial construction and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement during the period of initial construction.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction by delivering a check payable to "FAO, USAED, Jacksonville District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Non-Federal Sponsor shall provide the contribution required under Article II.G.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 120 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment through the first fiscal year of the authorized periodic nourishment period. Not later than such scheduled date, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or provided an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.E.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for periodic nourishment incurred prior to the commencement of the authorized periodic nourishment period; and (b) the non-Federal proportionate share of financial obligations for periodic nourishment as they are incurred during the authorized periodic nourishment period.

4. If at any time during the authorized periodic nourishment period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for periodic nourishment for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.E.1. of this Agreement.

F. Upon completion of each iteration of periodic nourishment or termination of this Agreement during the authorized periodic nourishment period, and upon resolution of all claims and appeals relevant to the periodic nourishment, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of periodic nourishment, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the authorized periodic nourishment period and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.I. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of total costs of periodic nourishment costs plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total costs of periodic nourishment plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period by delivering a check payable to "FAO, USAED,

Jacksonville District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of total costs of periodic nourishment costs plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

1. At least annually the Non-Federal Sponsor shall monitor the beach and other Project features to determine losses of nourishment material from the Project design section and provide the results of such monitoring to the Government.

2. The Non-Federal Sponsor shall grade and reshape the beach using material within the Project area and maintain other Project features associated with the beach.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and

to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600 7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army" and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring Non-Federal preparation and implementation of flood plain management plans.

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall

be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., II.G., II.I., II.J., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. or VI.F. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601 - 9675, that may

exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor or the Government during the period of initial construction for such investigations for hazardous substances shall be included in total costs of initial construction and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Non-Federal Sponsor or the Government during the authorized periodic nourishment period for such investigations for hazardous substances shall be included in total costs of periodic nourishment and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate initial construction or periodic nourishment of the Project, or, if already in initial construction or periodic nourishment, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to

otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chairman
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

If to the Government:

District Engineer
U.S. Army Engineer District
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery on lands subject to federal cost sharing that exceed the one percent limit shall be included in total project costs and cost shared in accordance with the provisions of this Agreement. Any costs of mitigation and data recovery on lands not subject to federal cost sharing (undeveloped private lands and privately owned shores that do not provide public benefits) that exceed the one percent limit shall not be included in total project costs but shall be paid by the Non-Federal Sponsor.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Brevard County Shore Protection Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$285,147,000, as calculated in accordance with ER 1105-2-100 using October 1, 1999 price levels and allowances for

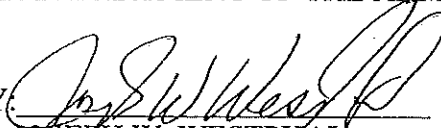
projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).


THE DEPARTMENT OF THE ARMY

BREVARD COUNTY, FLORIDA

BY:


JOSEPH W. WESTPHAL
Assistant Secretary of the Army
(Civil Works)

BY:


NANCY HIGGS
Chairman
Brevard County Board
of County Commissioners

DATE:

April 20, 2000

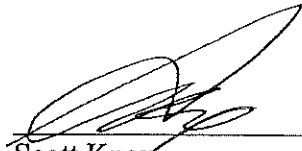
DATE:

April 20, 2000

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
19th day of April 2000.



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING

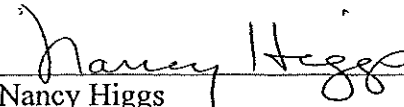
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Nancy Higgs
Chairman
Brevard County Board of
County Commissioners

DATE: April 20, 2000



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

J.3

7/21/2020

Subject:

Legislative Intent and Permission to Advertise an Amendment to Section 74-102, Brevard County Code of Ordinances

Fiscal Impact:

Cost of enforcement as well as staff time necessary to create and maintain registry (minimal)

Dept/Office:

District 3

Requested Action:

Approval of legislative intent and permission to advertise amendments to County Code regarding sexual offenders and sexual predators, in order to close the private park and playground loophole.

Summary Explanation and Background:

Currently, Sec. 74-102 of Brevard County Code of Ordinances states, in part, that “no sexual offender or sexual predator shall enter into or remain within the 1,000-foot buffer zone surrounding any school, daycare center, park or playground. . .” Meanwhile, Sec. 74-101 defines park as “a *publicly* owned or operated area used or available for the public’s use as a recreational facility. . .”

This definition is substantially different from the definition of parks used in this context in Florida Statute. Fla. Stat. Sec. 775.215 defines park as “all public *and private* property specifically designated as being used for recreational purposes and where children regularly congregate.”

The limitation in County Code to publicly owned or operated areas is increasingly critical. A growing number of private entities are operating in the market-space of child recreation. As such, it is suggested that the Board consider options to close this loophole.

As such, it is suggested that the Board create a registry for businesses to opt-in. As part of the process to be included on this registry, a private business would certify that the business is a place where children regularly congregate and a primary aspect of its business involves recreation.

It could accomplish this by creating a new subsection of code in Sec. 74-102(b) establishing a registry of businesses who choose to restrict sexual offenders and sexual predators from coming within 1,000 feet of the premises. To be included on the registry, an agent of said business would be required to certify that it is a place where children regularly congregate and a primary aspect of the business involves recreation. It is contemplated that such certification would be valid for one year, with the option to renew as needed.

The following language is suggested for advertisement:

AN ORDINANCE AMENDING SECTION 74-102 OF THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA IN ORDER TO ESTABLISH A VOLUNTARY REGISTRY OF BUSINESSES WHICH HAVE AS A PRIMARY PURPOSE RECREATION AND WHERE CHILDREN REGULARLY CONGREGATE, TO WHICH A 1,000 FOOT BUFFER ZONE RESTRICTION WILL BE APPLIED TO CONVICTED SEXUAL OFFENDERS AND PREDATORS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Clerk to the Board Instructions:



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Addon

J.4

7/21/2020

Subject:

Banana Riverfront, LLC

Fiscal Impact:

unk

Dept/Office:

Citizen Request / Kim Rezanka, Cantwell & Goldman, P.A.

Requested Action:

Request to allow Fla. Stat. 252.363 to act as a tolling of these permits, as set forth below, and/or to allow final approval of the project, per the Settlement Agreement, prior to the performance bond expiration on October 26, 2020.

Summary Explanation and Background:

RE: Banana Riverfront, LLC: Site Plan Application No. 19ER00037; Temporary CO PERMIT# 17BC10869; & Settlement Agreement dated March 21, 2017

On October 8, 2019, the County Commission voted to allow Banana Riverfront, LLC (a/k/a/ Squid Lips Cocoa Beach) nine months to complete all improvements required under the Settlement Agreement. That deadline is July 22, 2020. If the improvements are not completed by that date, County Staff is authorized to call the performance bond without further Board action. As we expect the work to be completed by the end of the July or early August (but not sure as to inspection timeline and approvals), it is imperative that we have guidance on whether these three (3) "permits" have been tolled, or if a formal extension of that deadline is required.

Since the meeting with staff on Oct 10, 2019, MBV Engineering made its initial Engineering Revision submittal in November of 2019. After four (4) more resubmittals, a combined site plan was approved on June 2, 2020. As MBV worked with the County Staff, there were new items (such as planting the ponds and regrading area on the site) that were never contemplated. Also, due to complete business shutdown at Squid Lips from the "safer at home" order and the unexpected death of Banana Riverfront's contractor, there have been challenges to completing the work finally approved on June 2nd.

Final site plan approval was granted on June 2, 2020. The contractor that had been hired to perform all work necessary passed away unexpectedly this Spring, and Mr. Underill was required to get new bids, once the approval was final. The surveyor completed the grade staking (74 stakes) for the revised elevations of the ponds approximately 10-14 days ago. Mr. Underill signed the contract for the grading and plant installation

on June 26th, and the work was planned to commence on Monday, July 6th. However, because of the continued rains, the ponds have been full of water so grading and planting could not take place in the ponds as anticipated. Some grading has been accomplished but work has been intermittent waiting for the ponds to sufficiently dry out to allow for the grading equipment to proceed.

The contractor anticipates 7-10 days to complete the grading and an additional 2 days to install the plants (assuming no rain or other delay). Without the delays due to rain, this work would have been completed by July 22nd (deadline for completion); but upon completion of the work the surveyor will need to complete an as-built, Bruce Moia will need to review and certify completion, then the County will need to inspect. These items will take the final approval beyond July 22nd.

The entire costs for the work and as-built is approximately \$10,000, and all should be substantially completed by July 22nd, weather permitting. For the County to pull the performance bond on July 22nd would be ineffective to cause the work to be completed.

With this as background, we are asking for confirmation that Governor DeSantis' March 1, 2020 Declaration of Emergency has tolled the period of time remaining for Banana Riverfront to exercise its rights of completion under the above three (3) permits/authorizations.

As support for this position, we have attached two documents, Fla. Stat. 252.363 and Fla. AGO 2012-13. Fla. Stat. 252.363 requires the tolling and extension of development orders following the declaration of a state of emergency by the Governor. We believe it is clear that the Site Plan and Temporary CO are permits which fall under this Statute and are tolled.

The more difficult question is whether the Settlement Agreement is an "authorization" or a "development order". We believe that it is and ask that you or the County Attorney's office so advise. While the term "development order" is not defined for purposes Sec. 252.363, that phrase is defined elsewhere in the statutes. As set out in Fla. AGO 2012-13, "development order" includes a development permit, which includes "any other official action of local government having the effect of permitting the development of land." Certainly, the Settlement Order had the effect of allowing the development of the land owned by Banana Riverfront. The case of Preserve Palm Beach PAC v. Town of Palm Beach, attached, is instructional on this issue and supports that the Settlement Agreement is a Development Order.

We request that the County Commission acknowledge that Fla. Stat. 252.363 applies to the three referenced permits, including the Settlement Agreement. Should the tolling extend past the performance bond expiration on October 26, 2020, Banana Riverfront, LLC will need to provide another bond to the County.

Contact: Kimberly B. Rezanka, Cantwell & Goldman, P.A., 321-639-1320, ext. 123

Clerk to the Board Instructions:

GENERAL PURPOSE RIDER

TO BE ATTACHED to and form part of Bond Number 72091314 issued by the
WESTERN SURETY COMPANY, as
Surety, on behalf of Banana Riverfront, LLC of
490 N. Harbor City, Melbourne, FL 32935, hereinafter referred
to as the Principal and in favor of Brevard County Board of County Commissioners
of 2725 Judge Fran Jamieson Way, Viera, FL 32940, hereinafter
referred to as the Obligee, in the sum of One Hundred Eighteen Thousand Nineteen and 00/100
Dollars (\$118,019.00), effective the 26th day of October, 2019.
NOW, THEREFORE, it is agreed that Paragraph 2 of the bond has been changed to read:
(See Attached)

IT IS FURTHER AGREED that all other terms and conditions of this bond shall remain unchanged.

THIS RIDER IS TO BE EFFECTIVE the 23rd day of September, 2019.

SIGNED, SEALED AND DATED this 23rd day of September, 2019.

Accepted By:

Brevard County Board of County Commissioners

By: _____

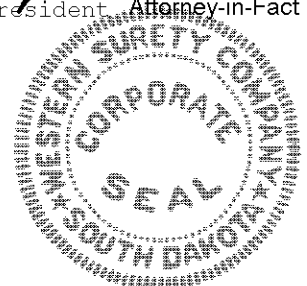
Banana Riverfront, LLC
(Principal)

By: _____ (Seal)

WESTERN SURETY COMPANY
(Surety)

By: Paul T. Bruflat (Seal)

Paul T. Bruflat, Vice President Attorney-in-Fact



Whereas, the Principal has entered into a ***Settlement Agreement dated March 21, 2017("Settlement Agreement") with the Obligee and has received Site plan approval for 17AD00026 on September 25, 2018***, guaranteeing only that the Principal will ***complete all improvements shown on approved plan #17AD00026 including corrections of outstanding deficiencies and approved work for stormwater improvements as per the County approved cost estimate prepared by: Bruce Moia, PE of MBV Engineering, Inc. said Settlement Agreement and site plan and cost estimate, all attached*** to and made a part hereof, at certain land known as 2200 Orlando Ave., Cocoa Beach, FL 32931 all of which improvements shall be completed on or before ***September 25, 2020*** or any extension thereof, and the Principal provides this bond as security for such agreement.

Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 72091314

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Paul T. Bruflat

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Banana Riverfront, LLC

Obligee: Brevard County Board of County Commissioners

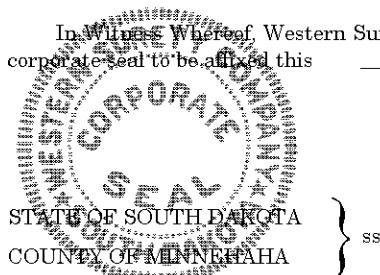
Amount: \$1,000,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

If Bond No. 72091314 is not issued on or before midnight of October 26, 2020, all authority conferred in this Power of Attorney shall expire and terminate.

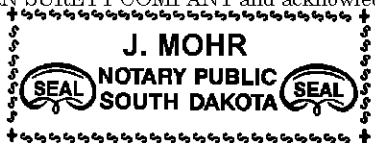
In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 26th day of October, 2019.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

On this 26th day of October, in the year 2019, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



Notary Public - South Dakota

My Commission Expires June 23, 2021

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 26th day of October, 2019.

WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.

50 So.3d 1176
District Court of Appeal of Florida,
Fourth District.

PRESERVE PALM BEACH POLITICAL ACTION
COMMITTEE and Patrick Henry Flynn,
Appellants,
v.
TOWN OF PALM BEACH, et al., Appellees.

No. 4D09-4947.

Dec. 15, 2010.

Rehearing Denied Feb. 4, 2011.

Synopsis

Background: Town filed complaint for expedited declaratory relief, seeking a declaration as to the constitutionality of proposed ballot initiative that sought to amend the town charter to incorporate provisions of town's agreement with a developer. The Fifteenth Judicial Circuit Court, Palm Beach County, David F. Crow, J., awarded summary judgment to town. Organization that proposed the initiative appealed.

Holding: The District Court of Appeal, Polen, J., held that initiative violated statute barring use of the initiative or referendum process in regard to any **development order**.

Affirmed.

- [1] **Zoning and Planning** — Approval of voters or property owners; referendum and initiative

Proposed ballot initiative that would have amended town charter to incorporate provisions of agreement with developer concerning development of certain real property, and would have required any future changes to the agreement to be approved by voter referendum, violated statute barring use of the initiative or referendum process in regard to any development order, **despite contention that the agreement was not a development order**; initiative attempted to subject the developer's successor to the referendum process any time it wished to do something not anticipated in the agreement, which was the very thing prohibited by the statute. West's F.S.A. §§ 163.3164(7), 163.3167(12).

Attorneys and Law Firms

***1176** Robert J. Hauser of Beasley Hauser Kramer Leonard & Galardi, P.A., West Palm Beach, and John M. Jorgensen of Scott, Harris, Bryan, Barra & Jorgensen, P.A., Palm Beach Gardens, for appellants.

John C. Randolph and Joanne M. O'Connor of Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, for appellee Town of Palm Beach.

John W. Little, III, P.A., and Richard J. Dewitt, III, of Brigham Moore, LLP, West Palm Beach, for appellee Sterling Palm Beach, LLC.

Opinion

POLLEN, J.

Appellants, Preserve Palm Beach Political Action Committee and Patrick Henry ***1177** Flynn (collectively "Preserve"), appeal the trial court's order granting appellee, Town of Palm Beach's, motion for summary judgment and denying appellants' cross-motion for summary judgment.

In the underlying action, the Town filed a Complaint for Expedited Declaratory Relief seeking a determination of the constitutionality of a Charter amendment proposed by Preserve. The proposed amendment, to be voted on by the citizens of the Town in a February 2010 election, would have required that the Town of Palm Beach Charter be amended to incorporate portions of a 1979 Agreement between the Town of Palm Beach and a developer. The incorporated provisions would prohibit the construction of new buildings in Royal Poinciana Plaza and would require that the Poinciana Theater be used only as a theater of the performing arts and/or visual arts or for lectures or other special events.

The complaint pled two counts of declaratory relief. Count I sought a determination of the constitutionality of the proposed amendment based on whether the amendment conflicted with section 163.3167(12), Florida Statutes, **by purporting to use the initiative or referendum process to alter a development order**. Count II sought a determination of the constitutionality of the proposed amendment based on whether the amendment was clear and unambiguous as required by section 101.161(1), Florida Statutes.

The parties agreed below that there were no genuine issues of material fact. The trial court was simply asked to determine two issues: (1) whether the 1979 Agreement was a development order, and (2) whether the proposed

amendment was unconstitutional on its face.

The 1979 Agreement

The 1979 Agreement between the Town and Poinciana Properties, Ltd. (the developer), was executed in order to satisfy a precondition to the Town's granting of a variance to the developer. At a hearing on the developer's motion for variance, the Town Council granted the motion "subject to [execution of] an agreement, in a form satisfactory to the Town Attorney," which would provide for sixteen specific conditions. A town building official subsequently advised the developer that the building permit would only issue after certain procedures had been followed:

After the town has approved said agreement, and after it has been recorded by the applicant, with original copy returned to the Town for the permanent record, and after the Town has received revised plans for approval which reflect the conditions of the agreement, then the Town Building permit to authorize commencement of construction may subsequently be issued.

The resulting Agreement provided, in part:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Cocoanut Row in the Town of Palm Beach ...; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting on February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

NOW, THEREFORE, know all men by these present that in consideration of the premises hereinbefore set forth and *1178 for other good and valuable considerations, the parties do hereby agree as follows:

....

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza, the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

....

E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and for lectures or other special events.

Proposed Charter Amendment

Prompted by the threat of demolition of the theater, Preserve sponsored the following ballot title, summary, and charter amendment petition in an effort to incorporate portions of the 1979 Agreement into the Town Charter:

BALLOT TITLE: Alterations of covenants of Royal Poinciana Plaza and Royal Poinciana Playhouse only by Referendum.

BALLOT SUMMARY: Voter approval required for alterations to the covenants set forth in the 1979 Royal Poinciana Plaza Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited, concerning property known as the Royal Poinciana Plaza.

TEXT OF THE PROPOSED CHARTER AMENDMENT

(1) The Town of Palm Beach Charter [s]hall be amended to incorporate portions of the covenants set forth in the 1979 Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited concerning property known as the Royal Poinciana Plaza; which do not allow the construction of new buildings in Poinciana Plaza, and require that the Poinciana Theater only be used as a theater of the performing arts and/or visual arts or for lectures or other special events.

(2) That a majority of Voters of the Town of Palm Beach voting in a referendum must approve any alterations to the Royal Poinciana Plaza Agreement.

After Preserve collected the required number of signatures, and the Town was told to put the proposed amendment on the ballot, the Town sought a declaratory judgment as to the constitutionality of the amendment. Following a hearing on the parties' motion and cross-motion for summary judgment, the trial court determined that the 1979 Agreement was a development order. Accordingly, the court granted the Town of Palm Beach's motion for summary judgment finding that the

proposed amendment was facially unconstitutional because it conflicted with section 163.3167(12). The court then determined that the issue of whether the proposed amendment was unconstitutionally vague was moot. Preserve now timely appeals.

We agree with the trial court's order and affirm. Section 163.3167(12), Florida Statutes, provides in part:

An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affects five or fewer parcels of land is prohibited.

§ 163.3167(12), Fla. Stat. (2009).¹ “Development order” is defined as “any order granting, denying, or granting with conditions an application for a development permit.” § 163.3164(7), Fla. Stat. (2009).

***1179** Preserve primarily argues that the Agreement is a “development agreement” and is not a “development order.” In support of its argument, Preserve first contends that the 1979 Agreement is plainly not an order, which is commonly defined as a “command, direction, or instruction.”² **The Town of Palm Beach responds that the 1979 Agreement meets the definition of “development order” provided in section 163.3164(7) because only by the 1979 Agreement did the Town officially grant, with conditions, the developer’s variance request.**

As the trial court noted, there is no controlling authority defining a “development order” under the circumstances present here. However, a “development agreement” has been defined as “a contract between a [local government] and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.” *Morgran Co. v. Orange County*, 818 So.2d 640, 643 (Fla. 5th DCA 2002) (quoting Brad K. Schwartz, *Development Agreements: Contracting for Vested Rights*, 28 B.C. Envtl. Aff. L.Rev. 719 (Summer 2001)). **The 1979 Agreement at issue did not freeze the zoning as to the developer but granted a variance from**

zoning with specific conditions. The official act of the Town which allowed the development was the execution of the 1979 Agreement, and not the pronouncement of approval during the town meeting.

Much of Preserve’s argument is based on the common understanding that an order, by definition, is often unilateral and non-negotiable. **However, we note that development orders are often the product of negotiations between a developer and a municipality.** Joseph Van Rooy, *The Development of Regional Impact in Florida’s Growth Management*, 19 J. Land Use & Envtl. L. 255, 256 (Spring 2004).

The legislative history of section 163.3167(12) does not provide any guidance as to the purpose of the statute. Still, as the trial court recognized, “[I]t is not difficult to see the due process problems associated with subjecting small property owners to public referendum votes when they would otherwise be entitled to a quasi[-]judicial hearing and review procedures.” The proposed amendment attempts to subject the landowner of the property at issue to the referendum process every time the landowner wishes to do something not anticipated in the 1979 Agreement. In other words, this amendment seeks to do the very thing prohibited by section 163.3167(12). The trial court was correct in determining that the amendment conflicted with Florida law.

The right of the people to vote on issues they are entitled to vote on is one of utmost importance in our democratic system of government. But there are issues—such as the right of a small landowner to use his property subject only to government regulations—which should not be determined by popular vote. Section 163.3167(12) rightfully protects the small landowner from having to submit her development plans to the general public and ensures that those plans will be approved or not, instead, by the elected officials of the municipality in a quasi-judicial process.

Affirmed.

WARNER and LEVINE, JJ., concur.

Footnotes

- 1 Neither party disputes that the subject property is comprised of fewer than five parcels.
- 2 Citing Black’s Law Dictionary (West’s 9th ed.) at 1206.

West's Florida Statutes Annotated

Title XVII. Military Affairs and Related Matters (Chapters 249-252) (Refs & Annos)

Chapter 252. Emergency Management (Refs & Annos)

Part I. General Provisions (Refs & Annos)

West's F.S.A. § 252.363

252.363. Tolling and extension of permits and other authorizations

Effective: June 28, 2019

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.
2. The expiration of a building permit.
3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.
4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

(b) Within 90 days after the termination of the emergency declaration, the holder of the permit or other authorization shall notify the issuing authority of the intent to exercise the tolling and extension granted under paragraph (a). The notice must be in writing and identify the specific permit or other authorization qualifying for extension.

(c) If the permit or other authorization for a phased construction project is extended, the commencement and completion dates for any required mitigation are extended such that the mitigation activities occur in the same timeframe relative to the phase as originally permitted.

(d) This subsection does not apply to:

1. A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies.
2. A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

3. The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action.

4. A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would be in conflict with the extensions granted in this section.

(2) A permit or other authorization that is extended shall be governed by the laws, administrative rules, and ordinances in effect when the permit was issued, unless any party or the issuing authority demonstrates that operating under those laws, administrative rules, or ordinances will create an immediate threat to the public health or safety.

(3) This section does not restrict a county or municipality from requiring property to be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances.

Credits

Added by Laws 2011, c. 2011-142, § 494, eff. July 1, 2011. Amended by Laws 2018, c. 2018-158, § 12, eff. April 6, 2018; Laws 2019, c. 2019-165, § 13, eff. June 28, 2019.

Notes of Decisions (1)

West's F. S. A. § 252.363, FL ST § 252.363

Current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through February 27, 2020

End of Document

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Staff Report

BOARD OF COUNTY COMMISSIONERS

SUBJECT: **Banana Riverfront LLC/Squid Lips**
 July 21, 2020 BOCC Meeting, Item J.4.
 2200 S. Orlando Ave. Cocoa Beach - District 2; Tax Account 2520254

DATE: **July 20, 2020**

AUTHOR: **Planning & Development Department (P&D)**

FISCAL IMPACT: **FY20/21: \$118,000 Bond**
 FY21/22: None

Summary

Since 2017, Staff has reviewed four site plans related to the above referenced project. The plans were submitted in an effort to address unpermitted work and in accordance with a Settlement Agreement, dated March 21, 2017. Under Board direction and in accordance with the Settlement Agreement, Staff issued temporary certificates of occupancy (TCOs) for this site, allowing simultaneous restaurant operation and completion of site work. The maximum allowance of administratively-issued TCOs were provided on the following dates: February 15, 2018; August 16, 2018; February 14, 2019; and August 14, 2019. Multiple submittals, reconstruction, and plan amendments were made necessary as the owner continued to construct improvements in conflict with approved plans, applicable county codes and comprehensive plan policies. The Board of County Commissioners is Obligee for a \$118,000 bond submitted by Banana Riverfront, LLC (extended on September 23, 2019; expiring October 26, 2020), for the completion of all improvements shown on approved plan #17AD00026 and approved work for the stormwater system.

The Board evaluated an extension request for this project on October 22, 2019 and directed staff to allow Banana Riverfront, LLC a single nine-month extension, advising that staff was to call the performance bond in nine months without further action from the Board should the improvements outlined under the settlement agreement not be completed within the time period specified. The Board also discussed the nine-month timeline as being sufficient to address unforeseen circumstances such as weather events.

On November 5, 2019, subsequent to bond extension, Land Development received Engineering Revision 19ER00037. During the review of this engineering revision, the applicant (MBV Engineering), repeatedly proposed designs that would have violated American with Disabilities Act (ADA) requirements and other County standards which either were not addressed in the Settlement Agreement or could not be waived by the County. Further, the MBV Engineering design relied upon faulty water table information which was generated by the developer's consulting team. Such reliance resulted in design features which, if approved, would have caused numerous unacceptable site challenges, including flooding ADA accessibility paths. This was not contemplated in the Settlement Agreement as asserted.

Staff appropriately commented and rightly withheld approval until MBV Engineering eventually modified the design based on valid data approved by staff. The statements in the agenda report seemingly reference



Staff Report

BOARD OF COUNTY COMMISSIONERS

inappropriate or unnecessary comments on the part of County staff. The attached Planning & Development comment letters provide combined agency issues and show Engineering Design and Natural Resources comments that were repeatedly disregarded by the applicant. In some cases, additional staff comments were warranted due to redesign and/or receipt of new information from the applicant. Therefore, the time to achieve site plan approval was without doubt the result of slow plan production and submittals to the County and the need for the design team to make necessary changes to their own plans.

Site Plan Review Timeline

March 21, 2017 Settlement Agreement

SITE PLAN 17SP00016

May 5, 2017 Application submitted for 17SP00016
May 18, 2017 Pre-Application Meeting
No further action on this project

MINOR SITE PLAN 17AD00023

October 18, 2017 Application submitted for minor site plan 17AD00023
November 9, 2017 Development Review Meeting (DRM) held
November 15, 2017 Resubmittal by applicant
November 29, 2017 Comment letter sent to applicant
December 19, 2017 3rd submittal
January 5, 2018 Approval letter sent to applicant

MINOR SITE PLAN 17AD00026

November 15, 2017 Application for minor site plan 17AD00026
December 7, 2017 DRM held
February 15, 2018 1st TCO for Building Permit 17BC10869 issued allowing continued restaurant operation
July 12, 2018 Resubmittal by applicant
July 18, 2018 Comment letter sent
August 8, 2018 Resubmittal by applicant
August 16, 2018 2nd TCO issued for Building Permit 17BC10869
August 20, 2018 Final Submittal Notification sent to applicant
September 24, 2018 Plans submitted and approved
October 26, 2018 Bond executed for Site Plan 17AD00026
February 14, 2019 3rd TCO issued for Building Permit 17BC10869
August 14, 2019 4th TCO issued for Building Permit 17BC10869

September 23, 2019 \$118,000 Bond Extended which expires October 26, 2020

October 22, 2019 Board approves nine-month extension for project completion



BOARD OF COUNTY COMMISSIONERS

Staff Report

ENGINEERING REVISION 19ER00037

November 5, 2019	Application submitted for Engineering Revision 19ER00037
December 4, 2019	Comment letter sent
December 19, 2019	Resubmittal by applicant
January 2, 2020	Comment letter sent
January 16, 2020	Meeting between EOR, Engineering & Natural Resources to review design concerns.
January 30, 2020	Resubmittal by applicant
February 13, 2020	Comment letter sent to applicant
February 25, 2020	Communication/Review - Applicant and Public Works outside of review process
March 12, 2020	Communication/Review - Applicant and Public Works outside of review process
March 30, 2020	Resubmittal
April 8, 2020	Fourth comment letter sent
April 22, 2020	Communication - Applicant and Public Works outside of review process
May 15, 2020	Resubmittal of plans
June 3, 2020	Final approved plans

September 25, 2020 *County deadline to notice intent to call the bond*

October 26, 2020 *Bond will expire*

Site Progress & Extension

Staff issued temporary certificates of occupancy (TCO) for this site on the following dates: February 15, 2018; August 16, 2018; February 14, 2019; and August 14, 2019. Engineering inspection staff has been conducting weekly site visits to monitor progress since the latest engineering revision was approved on June 3, 2020. They noted no progress until the week of July 13, 2020, when a contractor was present on site. Staff anticipates that the work remaining amounts to approximately two weeks of construction, provided adequate resources are allocated. The average timeframe for permit closeout is approximately three weeks, depending on production of as-built surveys and completion of punch list items. This equates to a total possible timeframe of five weeks for construction and closeout of this project.

Staff requires a minimum of 30 days (September 25, 2020) to provide proper notification to the bonding company if it becomes necessary for the County to call the bond. Therefore, any extension granted should not extend beyond this date. Conversely, a new bond could be submitted if the Board desires to allow extension beyond September 25, 2020.

Attachment: Planning & Development Comment Letters for Engineering Revision 19ER00037



BOARD OF COUNTY COMMISSIONERS

December 4, 2019

Bruce Moia, P.E.

MBV Engineering, Inc.

1250 W. Eau Gallie Blvd., Unit H

Melbourne, FL 32935

Telephone: (321) 253-1510

E-mail: brucem@mbveng.com

Application Number: **19ER00037**

Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit two (2) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved.

Project number and name must be referenced with the response. Also include the form “Document Submittal for Subsequent Reviews” found online at our website at this location

<http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x58335, nicholas.gagliardo@brevardfl.gov

Deficiencies

1. Please add a legend to describe the various text sizes and styles used. Are these proposed elevations or existing elevations?

2. Sheet C-5, please clarify notes on eastern parking stall in northern unpaved area stating “Construct additional Retention Area #5...” and Additional Retention Area #1B. Will these parking spaces be demolished for two additional pond areas?

a. If so, please show proposed pond outlines and revise the total number of parking to exclude these parking spaces. Please show additional parking to meet the required 109 spaces total per the July 12, 2018 approved parking reduction waiver. Please cloud these areas for clarity.

3. Sheet C-6, parking spaces in southeast corner of property shown conflicting with one another. Please revise parking spaces to prevent conflict. As shown, this parking is not acceptable.
4. With the millings removed from the stabilized parking areas (noted as approximately 4-inches), please show the As-Built elevations in the parking areas on the drainage plans. If the parking areas were raised to the existing elevation, please specify the replacement material used to raise the parking area 4-inches. Replacement material shall be non-calcareous as previously approved; shell material slated for future improvement is an acceptable material. Additionally, please provide spot elevations demonstrating proposed drainage pattern for these areas. Note, unstabilized material will lead to excessive erosion in a sheet-flow condition during high intensity storm events, and will cause future maintenance issues for both the parking and pond.
5. Please clarify grading for Retention Area 3 and associated subbasin. Elevations shown (2.79) in parking appear to allow ponding in the southern accessible parking space. This was also observed on a site visit. Please provide additional spot elevations showing positive drainage to Retention Area #3 (TOB 2.80) and provide additional detail as to how water will enter this area (ie. concrete weir, etc.). Currently pond was filled in and an earthen berm was observed preventing sheet flow into the previous retention area. If no improvements are planned to be made, please remove this retention area from the stormwater calculations.
6. Please update the Stage-Storage Relationship table in the submitted Stormwater Report. Currently the pond bottoms (elevation 2.45) are shown within 1-ft of the seasonal high ground water elevation which will functional impede the ability of the ponds to recover and treat as intended. Geotechnical boring in Retention Area 1 shown as elevation 2.7 per Soil Boring Summary on Sheet C-4, elevation 1.7 in Retention Area #2, and elevation 2.0 near Retention Area 3. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high-water elevation.
 - a. Based on response to comment #1 above, spot elevations shown on this engineering revision do not provide a consistent pond bottom grade and do not support the elevations used to calculate treatment volume in the stormwater calculations. Please clarify existing versus proposed elevations for the pond areas. Several pond bottom elevations are shown within one foot of the seasonal high-water elevation. Please update the plans and stormwater calcs for consistency and adherence to the code.
7. In the Stormwater Report; Please include the updated BMPTrains input and results.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

1) Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

2) Based on previous failed landscape inspection, it is apparent that the Crinum lilies cannot handle the conditions at that location - perhaps too much wind/salt spray, and/or not enough water/lack of irrigation. Maybe a tougher shrub such as sea grape or buttonwood would survive

the current conditions. Also, this layer should be spaced about 4 feet on center.

3) Dwarf bottlebrush has moderate aerosol salt tolerance, and will not do well in that location. Tougher alternatives will survive better such as a dwarf Pittosporum variety, Chrysobalanus icaco (cocoplum), coontie, or green island ficus. Should be spaced about 3 feet on center.

4) Shorter plantings (salt tolerant) around the sign are acceptable if necessary.

5) How will plantings be watered until established? Please specify on plans.

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Deficiencies

1. Please revise the Demolition Summary accordingly to changes proposed on Sheet C-2. Areas being removed have been reduced according to the acreage labeled on the Sheet. Please revise loading and treatment calculations based on revised impervious areas.

2. A recent visit to the site is showing water in retention areas 1 and 2. Please revise your calculations. Material in the pond must match percolation rates used in the modeling and design. In addition, a trench was cut off from the retention area 2, discharging into the lagoon.

3. Please see Engineering comments regarding retention.

4. Additional comments may be provided upon receipt of new or incomplete information.

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Lucas Siegfried, (321) 633-2091 x58384, lucas.siegfried@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

1) The project site is subject to a Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017. Please state on the site plan that: "This site shall be developed and utilized in compliance with the terms of the Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017." Please also state on the site plan: "Prior to having live music on the deck, Riverfront shall install both a noise curtain on the north side of the property from the hard cover canopy to the roof of the building and a 'mass-loaded vinyl' sound blanket over the bandstand area. Amplified live music on the deck shall be limited to the following times and durations: 1) Monday – Thursday: 6:00 pm – 10:00 pm; 2) Friday, Saturday, Federal Holidays and any day immediately prior to a Federal holiday: 2:00 PM – 10:00 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks music."

- 2) Please state on site plan whether site is or is not required to submit Risk Management Plan (RMP) pursuant to U.S. Environmental Protection Agency (EPA) regulations. If an RMP is required, please return that information to this office. If RMP is not required, please add this note to site plan: "The uses proposed as part of this site plan do not require a submittal of a Risk Management Plan pursuant to U.S. Environmental Protection Agency (EPA) regulations and shall not exceed EPA's Risk Management Plan
- 3) Please ensure all signs comply with Section 62-3301-62-3319 of Article IX, Sign Code. Signs can be submitted for zoning review with site plan or wait to be reviewed through building permit process. Please either provide all sign details or have signs reviewed at permit stage and remove signs from site plan. Variances, if applicable, must be approved prior to permitting.

Thank you,

Tim Craven
Planner I



BOARD OF COUNTY COMMISSIONERS

January 2, 2020

Bruce Moia, P.E.

MBV Engineering, Inc.

1250 W. Eau Gallie Blvd., Unit H

Melbourne, FL 32935

Telephone: (321) 253-1510

E-mail: brucem@mbveng.com

Application Number: **19ER00037**

Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit five (5) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved.

Project number and name must be referenced with the response. Also include the form “Document Submittal for Subsequent Reviews” found online at our website at this location

<http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335, nicholas.gagliardo@brevardfl.gov

Deficiencies

1. Previous Comments #1, #5, #6, and #7 were not addressed, and are copied in full below. Please address in the re-submission. Additionally, based on field inspection on 12/3/19, two additional pumps were observed on-site within pond #1, one with a sump dug to drain excess standing water. If the pumps are to remain, please add to the plans, show intake elevations at or above the required treatment elevation, and show pre-condition discharge rates are not being exceeded. The continued presence of standing water further evidences that these ponds will not function properly given their proximity to the season high groundwater elevation. Additional geotechnical bores may be necessary to support any changes to the estimated season high water table in the different ponds. Previously a lower elevation of 1.73 was suggested, but the presence of standing water brings these elevations to question. Please

address with Previous Comment (P.C.) #6 below.

P.C. 1. Please add a legend to describe the various text sizes and styles used. Are these proposed elevations or existing elevations?

P.C. 5. Please clarify grading for Retention Area 3 and associated subbasin. Elevations shown (2.79) in parking appear to allow ponding in the southern accessible parking space. This was also observed on a site visit. Please provide additional spot elevations showing positive drainage to Retention Area #3 (TOB 2.80) and provide additional detail as to how water will enter this area (ie. concrete weir, etc.). Currently pond was filled in and an earthen berm was observed preventing sheet flow into the previous retention area. If no improvements are planned to be made, please remove this retention area from the stormwater calculations.

P.C. 6. Please update the Stage-Storage Relationship table in the submitted Stormwater Report. Currently the pond bottoms (elevation 2.45) are shown within 1-ft of the seasonal high ground water elevation which will functional impede the ability of the ponds to recover and treat as intended. Geotechnical boring in Retention Area 1 shown as elevation 2.7 per Soil Boring Summary on Sheet C-4, elevation 1.7 in Retention Area #2, and elevation 2.0 near Retention Area 3. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high water elevation.

a. Based on response to comment #1 above, spot elevations shown on this engineering revision do not provide a consistent pond bottom grade and do not support the elevations used to calculate treatment volume in the stormwater calculations. Please clarify existing versus proposed elevations for the pond areas. Several pond bottom elevations are shown within one foot of the seasonal high water elevation. Please update the plans and stormwater calcs for consistency and adherence to the code.

P.C. 7. In the Stormwater Report; Please include the updated BMPTrains input and results.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Deficiencies

1. Regarding our previous comment number one there are some discrepancies between the approved plans (17AD00026) and the last two engineering revision submittals:

a. Asphalt area to be removed (with a building that will also be removed) is labeled as 3413 sf in approved plans (17AD00026) vs 3235sf on engineering revision 19ER00037 plans. Also, “Existing asphalt” and “Total impervious removed” on the Demolition summary are not consistent throughout plans. Please revise.

b. Approved plans 17AD00026 an extra 1730sf that were to be removed and turn into a

retention area, exempt from treatment calculations. The engineering revision 19ER00037 plans is keeping this area as impervious. Please revise loading and treatment calculations based on revised impervious areas.

2. Regarding our previous comment number 2, a discussion with Engineering confirmed percolation rates are fine. However please address to Engineering comments about the pond bottom elevation in Retention Area No. 1 and proximity with Season High Water Table and request for additional geotechnical borings.

3. A trench cut off from the retention area 2, directly discharging into the lagoon is not shown on any approved or pending plans. This is an illegal discharge into the IRL. Failure to resolve this will result in potential county/state enforcement action.

4. Additional comments may be provided upon receipt of new or incomplete information.

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Lucas Siegfried, (321) 633-2091 x58384, lucas.siegfried@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Deficiencies

Please take action regarding, not merely acknowledge, comment 1. Please simply place the two following notes on the plan:

1. "This site shall be developed and utilized in compliance with the terms of the Mediation Settlement Agreement between Banana Riverfront, LLC and Brevard County dated March 1, 2017."

2. Prior to having live music on the deck, Riverfront shall install both a noise curtain on the north side of the property from the hard cover canopy to the roof of the building and a 'mass-loaded vinyl' sound blanket over the bandstand area. Amplified live music on the deck shall be limited to the following times and durations: 1) Monday - Thursday: 6:00 pm - 10:00 pm; 2) Friday, Saturday, Federal Holidays and any day immediately prior to a Federal holiday: 2:00 PM - 10:00 PM with music not to exceed a 4-hour block with a minimum of 1 hour between blocks of music."

Thank you.

All other comments adequately addressed.

Thank you,

Tim Craven
Planner I



BOARD OF COUNTY COMMISSIONERS

February 13, 2020

Bruce Moia, P.E.

MBV Engineering, Inc.

1250 W. Eau Gallie Blvd., Unit H

Melbourne, FL 32935

Telephone: (321) 253-1510

E-mail: brucem@mbveng.com

Application Number: **19ER00037**

Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit five (5) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved.

Project number and name must be referenced with the response. Also include the form "Document Submittal for Subsequent Reviews" found online at our website at this location

<http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335, nicholas.gagliardo@brevardfl.gov

Deficiencies

Reviewed by: Nicholas Gagliardo, 321-637-5437 Extension 58335#, nicholas.gagliardo@brevardfl.gov

1. Previous Comments were not addressed.

P.C. 1. It is unclear in the plans which elevations are existing and which are proposed. Please add a legend to the plans to clarify. Bold pond contours do not extend around the ponds; will only new pond areas be regraded? Pond elevations in the plans do not match the stormwater calculations, please update for consistency.

P.C. 5. Retention Area #3 is not currently functional based on existing grades / condition. If the intention is to leave this area unimproved, please remove this area from the required treatment volume calculations.

P.C. 6. Per Brevard County Code of Ordinance 62-3756 Exhibit A to Division 6, Section 4.4(k) dry pond bottom shall be at least one-foot above the seasonal high water elevation. Please revise pond bottom elevations accordingly. Per the Geotechnical Testing, S.H.W.T. in Retention Area #1 is 2.7, S.H.W.T. in Retention Area #2 is 1.7, S.H.W.T. in Retention Area #3 is 2.0.

P.C. 7. Please clarify basin areas for retention areas shown, and update the BMPTrains model to accurately reflect captured area. Current calculations assume 100% catchment area which is not supported with elevations and grading shown.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Approved

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Rudy Mulamba, (321) 633-2091 x58380, rudy.mulamba@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Approved



BOARD OF COUNTY COMMISSIONERS

April 8, 2020

Bruce Moia, P.E.

MBV Engineering, Inc.

1250 W. Eau Gallie Blvd., Unit H

Melbourne, FL 32935

Telephone: (321) 253-1510

E-mail: brucem@mbveng.com

Application Number: **19ER00037**

Application Name: **Squid Lips Cocoa Beach**

RE: Review Comments

Your application was reviewed for compliance with the Brevard County Code and other applicable regulations and ordinances. The following comments were received from the various review agencies. Please make the appropriate revisions and resubmit three (3) sets of revised plans with a cover letter providing a written response **listing each agency comment and your response** to each of the items shown as a deficiency below and how it has been resolved.

Project number and name must be referenced with the response. Also include the form “Document Submittal for Subsequent Reviews” found online at our website at this location

<http://www.brevardcounty.us/docs/default-source/planning-and-development/document-submittal-for-subsequent-reviews.pdf?sfvrsn=2>

Subsequent project review fees required for next submittal: \$ 000.00

ENGINEERING DESIGN - 321-637-5437

Reviewed by: Nicholas Gagliardo, 321-637-5437 x 58335#, nicholas.gagliardo@brevardfl.gov

1. Previous Comment “P.C. 6”: Current pond bottoms are shown within one-foot of the seasonal high groundwater level. Per 62-3756 Exhibit A to Division 6, Section 4.4(k), “[d]ry ponds may be used if the bottom of the pond is at least one-foot above the seasonal high groundwater level... If the bottom of a dry pond is less than one-foot above the seasonal high ground water level due to physical constraints of the site, or with the approval of the reviewer, the bottom of the pond shall be planted with the wetland vegetation to control cattail growth...” Please coordinate any proposed planting plan with Natural Resources, Jeanne Allen at 321.633.2016 Ext. 58433. Additional plantings within these ponds will need to be incorporated in the Landscape Plan, maintained in perpetuity and subject to the final landscape inspection.

2. Previous Comment "P.C. 1": Thank you for clarifying the grades and elevations shown. Based on this new information, the following comments have been raised:

- a. Sheet C-4: Existing Retention Area #1 is only shown with existing contours and includes a note, "EXISTING RETENTION AREA #1 TOP +/- 3.0 BOTTOM +/-2.45." This note is both inconsistent with the stormwater calculations and the existing spot elevations shown mostly between 1.9 and 2.4. Please clarify if the intent for this pond. Will the pond be graded / constructed to have a top of bank at 3.0 and bottom at 2.45? The pond bottom does not meet the minimum elevation of 1-foot above the extrapolated E.S.H.W.T. (between 1.7 and 2.1) in its current state. Please review and revise the plans and calculations as needed. If the pond bottom will be within 1-foot of the E.S.H.W.T. please provide calculations for the proposed pond bottom meeting drawdown requirements and include plantings as noted in the comment above.
- b. Sheet C-4: Retention Area #1a is shown with a proposed top of bank of 2.9. Pavement spot elevations in this area are shown below this elevation (2.62, 2.73, 2.51...). Please clarify drainage pattern; currently no inlets are shown for these low areas, and regrading does not appear to be specified.
- c. Sheet C-4: Existing spot elevations of 3.1 and 2.4 east of Retention Area #2 do not appear to have positive drainage based on the proposed Retention Area #2, 4A, 4B, and 4C pond top of bank (T.O.B.) contour of 3.5. Will inlets be installed at these low spots to facilitate drainage? Please clarify drainage pattern, and ensure water will not stage onto the A.D.A. accessible sidewalk route. Current MODRET report shows a peak stage of 3.341 for pond #2. Please see comment #3 below for potential modeling revisions that may further affect the peak stage, and address any water staging across the A.D.A. routes as applicable.
- d. Sheet C-5: Please clarify proposed grading for Retention Area #1. Will the existing Retention Area #1 T.O.B. on the north side of Pond #1B remain as a high point (at T.O.B. of 3.0?) between Retention Area #1 and #1B? Or will the existing T.O.B. be removed in this area to create one large pond? Currently, the MODRET report shows a peak stage of 3.36 for Pond #1B, which will overflow the Pond #1 T.O.B.; please clarify grading between these ponds.
- e. Sheet C-5: K.S.M. Geotech report dated 2020 shows a E.S.H.W.T. elevation of 2.1 for Pond #1b. Please revise pond bottom elevation to achieve a minimum separation to the E.S.H.W.T. of 6-inches.
- f. Sheet C-5: Retention Area #3 is called to have a pond bottom of 2.6 and top of bank of 2.8; however, existing spot elevation along the bottom of the pond (2.7) do not support these elevations. Please revise the calculations to exclude this pond, or show proposed contours to re-shape this pond.
- g. Sheet C-5: Pavement low spot elevation of 2.88 between existing 1-story building and bicycle rack does not appear to have positive drainage. Please show how the pavement runoff is directed into the retention areas for treatment. Will a flume be constructed? Please clarify stormwater treatment for this pavement sub-basin.
- h. Please verify and adjust pond stage-area values based on comments above (e.g. pond #1 top and bottom elevation, pond #1b bottom elevation, pond #3 bottom elevation) and ensure that pond area/volume within the property limits are being included in the

calculations for the pond/treatment volumes. Currently, pond #1 and #1b both appear to be including pond area/volume outside of the property limits.

3. Previous Comment "P.C. 6": Thank you for the additional geotechnical information. Per the KSM report dated March 18th, 2020, the E.S.H.W.T. at location 2 was approximately 10-inches below grade. Per Sheet C-4 of the plans, the ground elevation at the bore hole location was 2.30; however, the E.S.H.W.T. is listed as elevation 1.8 in the MODRET Model, which is not reflective of 10-inches below grade (elevation 1.5). Please clarify the E.S.H.W.T. in this retention area and update the MODRET Model accordingly.

LAND DEVELOPMENT/PLATTING - 321-633-2065

Reviewed by: Tim Craven, (321) 633-2072 x 54133, tim.craven@brevardfl.gov

Approved

LANDSCAPE/CLEARING - 321-633-2016

Reviewed by Jeanne Allen 321-633-2016 ext 58433 Jeanne.allen@brevardfl.gov

Approved

NATURAL RESOURCES – 321-633-2016

Reviewed by: Vanessa Arnal, (321) 633-2016 x52904, vanessa.arnal@brevardfl.gov

Approved

SURVEY - 321-633-2080

Reviewed by: Tony Vitale, (321) 633-2080 x 52818, tony.vitale@brevardfl.gov

Approved

TRAFFIC ENGINEERING - 321-633-2077

Reviewed by: Devin A. Swanson, (321) 633-2077, devin.swanson@brevardfl.gov

Approved

UTILITY SERVICES - 321-633-2091

Reviewed by: Rudy Mulamba, (321) 633-2091 x58380, rudymulamba@brevardfl.gov

Approved

ZONING - 321-633-2070

Reviewer: Peter J. Martin, 321-350-8268, peter.martin@brevardfl.gov

Approved