



Mayor
ROB MEDINA
Deputy Mayor
KENNY JOHNSON
Councilmembers
RANDY FOSTER
DONNY FELIX

AGENDA

Regular Council Meeting 2022-01 Thursday

**January 6, 2022 - 7:00 PM
Council Chambers, 120 Malabar Road SE, Palm Bay FL 32907**

CALL TO ORDER:

INVOCATION:

1. Bishop Merton Clark - Truth Revealed International Ministries, Palm Bay.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student' member position).++
2. One (1) vacancy on the Disaster Relief Committee.++

AGENDA REVISIONS:

1. Item 1, under Presentations, relating to FP&L's Storm Secure Underground Program: The presentation has been revised and the presenter listed on the agenda has changed from Sue Williams to Jacob Benator.
2. Item 16, under Consent Agenda, relating to Phase 4 of the GO Road Bond Paving Program: The item has been rescheduled for the January 20, 2022, regular Council meeting.

PROCLAMATIONS AND RECOGNITIONS:

1. Proclamation: Human Trafficking Awareness Month - January 2022.

PRESENTATIONS:

1. Jacob Benator, Florida Power and Light - Storm Secure Underground Program. (AGENDA REVISION)

PUBLIC COMMENTS/RESPONSES:

Public comments will be heard by the City Council on non-agenda issues. Speakers must complete 'Public Comment Cards' (orange) and are limited to three (3) minutes each.

PUBLIC HEARINGS:

1. Ordinance 2021-83, vacating a portion of the road right-of-way known as Mercury Avenue SE located within Port Malabar Unit 40 (0.722 acres) (Case VRW-3-2021, Mercury Avenue LLC and Mercury Avenue Too LLC), final reading.
2. Ordinance 2021-85, rezoning property located at the northwest corner of Robert J. Conlan Boulevard and Commerce Park Drive, from LI (Light Industrial and Warehousing District) to BMU (Bayfront Mixed Use District) (7.11 acres) (Case CPZ-11-2021, NSD Palm Bay IV, LLC), final reading. (Quasi-Judicial Proceeding)
3. Ordinance 2021-88, rezoning property located north of and adjacent to Malabar Road, in the vicinity west of St. Johns Heritage Parkway, from PMU (Parkway Mixed Use District) to CC (Community Commercial District) (9.75 acres) (Case CPZ-18-2021, Willard Palmer), final reading. (Quasi-Judicial Proceeding)
4. Ordinance 2021-91, amending the Code of Ordinances, Chapter 55, Police and Firefighters Retirement Pension Plan, by increasing the supplemental benefit amount for police officers separating with vested service or retiring on or after October 1, 2021, final reading.
5. Ordinance 2021-92, amending the Code of Ordinances, Chapter 117, Alarm Systems, by repealing provisions which provide for civil penalties for false alarms, final reading.
6. Request by Michael and Jeanne Cullen for a variance to allow a proposed swimming pool and deck to encroach seven (7) feet into the 10-foot rear accessory structure setback in PUD (Planned Unit Development) zoning, as established by Section 185.118(A)(4), Palm Bay Code of Ordinances (0.17 acres) (V-51-2021). (Quasi-Judicial Proceeding)
7. Resolution 2022-01, granting a conditional use to allow a proposed security dwelling unit in GC (General Commercial District) zoning on property located east of and adjacent to Thor Avenue, in the vicinity south of Agora Circle (0.56 acres) (Case CU-53-2021, Scott Macfarlane). (Quasi-Judicial Proceeding)
8. Ordinance 2022-02, vacating a portion of the rear public utility and drainage easement located within Lots 6 and 7, Block 2602, Port Malabar Unit 49 (Case VE-11-2021, Cynthia and Alfred Bernhofer), first reading.
9. Ordinance 2022-03, vacating a portion of the side public utility and drainage easement located within Lot 21, Block 1998, Port Malabar Unit 42 (Case VE-12-2021, Gary Goodnight), first reading.
10. Ordinance 2022-04, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations', by including canine training and similar uses as a permitted use in LI (Light Industrial and Warehousing District) zoning (Case T-52-2021, Michael Piazzola), first reading.
11. Ordinance 2022-05, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'Supplementary District Regulations', by modifying provisions related to the architectural appeal process (Case T-55-2021, City of Palm Bay), first reading.
12. Ordinance 2022-06, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located south of and adjacent to Arabia Road, in the vicinity west of Cleaves Street, from Recreation and Open Space Use to Single Family Residential Use (1.46 acres) (Case CP-19-2021, Steffany and Victor Lopez), only one reading required.

13. Ordinance 2022-07, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located east of and adjacent to Krassner Drive, in the vicinity north of Hayworth Circle, from Commercial Use to Multiple Family Residential Use (6.52 acres) (Case CP-20-2021, Bibi and Gurudeo Chand), only one reading required.
14. Ordinance 2022-08, rezoning property located east of and adjacent to Krassner Drive, in the vicinity north of Hayworth Circle, from NC (Neighborhood Commercial District) to RM-15 (Single-, Two-, and Multiple-Family Residential District) (6.52 acres) (Case CPZ-20-2021, Bibi and Gurudeo Chand), first reading. (Quasi-Judicial Proceeding)
15. Ordinance 2022-09, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located at the northwest corner of Jupiter Boulevard and Brevard Avenue, from Single Family Residential Use to Mixed Use (23.86 acres) (Case CP-13-2021, Sachs Capital Group, LP and Identical Investments, LLC), only one reading required.
16. Resolution 2022-02, granting approval of a Preliminary Development Plan for a proposed mixed-use development to be known as 'Jupiter Bay PUD' in RR (Rural Residential District) zoning, which property is located at the northwest corner of Jupiter Boulevard and Brevard Avenue (23.86 acres) (Case PD-48-2021, Sachs Capital Group, LP and Identical Investments, LLC). (Quasi-Judicial Proceeding)
17. Request by Alfred and M. Agarie to rezone property located east of and adjacent to Dixie Highway, and west of and adjacent to Ridge Road, from HC (Highway Commercial District) to BMUV (Bayfront Mixed Use Village District) (0.34 acres) (Case Z-54-2021). (CONTINUED TO 01/05/22 P&Z and 02/03/22 RCM)
18. Ordinance 2021-89, amending the Code of Ordinances, Chapter 37, Growth Management Department, by removing the Code Compliance Division from the department's composition, final reading. (WITHDRAWN)
19. Ordinance 2021-90, amending the Code of Ordinances, Chapter 40, Building Department, by including the Code Compliance Division under the department's duties and responsibilities, final reading. (WITHDRAWN)

CONSENT AGENDA:

There will be no separate discussion on those items listed under Consent Agenda (indicated with asterisks(*)). They will be enacted by the City Council on one motion. If discussion is desired by the City Council, that item will be removed from the Consent Agenda by Council and will be considered in the order that it appears on the agenda.

1. Adoption of Minutes: Regular Council Meeting 2021-31; December 2, 2021.
2. Adoption of Minutes: Special Council Meeting 2021-32; December 9, 2021.
3. Award of Bid: Auction services – IFB 05-0-2022 – Procurement Department (George Gideon Auctioneers, Inc.).
4. Miscellaneous: 'Other Agency' contract, sodium hypochlorite system upgrade, North Regional Water Treatment Plant (Town of Davie contract) – Utilities Department (Odyssey Manufacturing – \$168,055).
5. Miscellaneous: 'Cooperative Purchase', miscellaneous products and services, online marketplace (Omnia Partners contract) – various City Department (Amazon Business – 'as needed' purchases); approval of Amazon Business Prime Medium subscription (\$1,299).
6. Resolution 2022-03, conveying City-owned surplus real estate located at 171 Holiday Park

Boulevard NE to buyer Tommy E. Ratcliffe (\$20,990).

7. Resolution 2022-04, conveying City-owned surplus real estate located at 340 Holiday Park Boulevard NE to buyer Stephen Gower (\$20,875).
8. Ordinance 2022-10, amending the Code of Ordinances, Chapter 52, Boards, Subchapter 'Code Enforcement Board', by repealing the subchapter in its entirety, first reading.
9. Ordinance 2022-11, amending the Code of Ordinances, Chapter 52, Boards, by creating a new subchapter to be titled 'Code Enforcement Special Magistrate', first reading.
10. Ordinance 2022-12, amending the Code of Ordinances, Chapter 55, Police and Firefighters Retirement Pension Plan, by modifying the minimum distribution of benefits and miscellaneous provisions, first reading.
11. Ordinance 2022-13, amending the Fiscal Year 2021-2022 budget by appropriating and allocating certain monies (first budget amendment), first reading.
12. Consideration of an interlocal agreement with Brevard County for regional opioid settlement funds.
13. Consideration of the Odyssey Charter School Junior/Senior High School Resource Officer Agreement for the 2021/2022 school year.
14. Consideration of an Addendum Counteroffer to the purchase offer for City- owned surplus real estate, generally located at 1230 Jacob Street SE, from buyer Fred DeNicci Construction (\$70,000).
15. Consideration of accepting the Community Development Block Grant - Mitigation Critical Facility Hardening Program grant awards for the Police Main Station (Matching HMGP Funding/Replacement Generator) and the Police Substation (Replacement Generator/Hurricane Shutters).
16. Consideration of the GO Road Bond Paving Program, Phase 4. (AGENDA REVISION)
17. Consideration of extending temporary benefits to City personnel for relief related to COVID-19 exposure.
18. Consideration of modifying the funding source for the salary increase (11%) for the Chief Building Official.
19. Consideration of travel and training for specified City employees (Office of the City Manager).
20. Consideration of travel and training for specified City employees (Police Department).

NEW BUSINESS:

1. Consideration of the City's 2022 federal legislative priorities.
2. Discussion of use of additional General Fund Undesignated Fund Balance for Fiscal Year 2021-2022.

COUNCIL REPORTS:

ADMINISTRATIVE AND LEGAL REPORTS:

PUBLIC COMMENTS/RESPONSES: Speakers are limited to 3 minutes.

ADJOURNMENT:

Councilmembers who are members of the Space Coast Transportation Planning Organization (TPO) may discuss TPO issues which may subsequently be addressed by

the TPO.

If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required, and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

Any aggrieved or adversely affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the City Clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or opposed to the requested quasi-judicial action. The required notice must be received by the Clerk no later than five (5) business days at the close of business, which is 5 p.m., before the hearing. (Section 59.03, Palm Bay Code of Ordinances).

In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.

If you use assistive technology (such as a Braille reader, a screen reader, or TTY) and the format of any material on this website or documents contained therein interferes with your ability to access information, please contact us. To enable us to respond in a manner most helpful to you, please indicate the nature of your accessibility problem, the preferred format in which to receive the material, the web address of the requested material, and your contact information. Users who need accessibility assistance can also contact us by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.

Pursuant to Council Policies and Procedures, members of the public wishing to use electronic media when addressing City Council must provide the electronic file to staff for screening no later than 2:00 P.M. on the day of the meeting; audio presentations must be submitted to the City Clerk at least twenty-four (24) hours prior to the meeting.

THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE AND TELEVISED ON THE SPACE COAST GOVERNMENT TV CHANNEL.



Florida Power & Light Company Storm Secure Underground Program

Palm Bay 2021



Agenda

- ▶ **Understanding Power Lines**
- ▶ **Hardening**
- ▶ **Storm Secure Underground Program Value**
- ▶ **Palm Bay Improvements and Plan**
- ▶ **Design and Outreach Process**
- ▶ **Construction Overview**



Power is delivered by two different power lines and poles

Main power line



Neighborhood power line

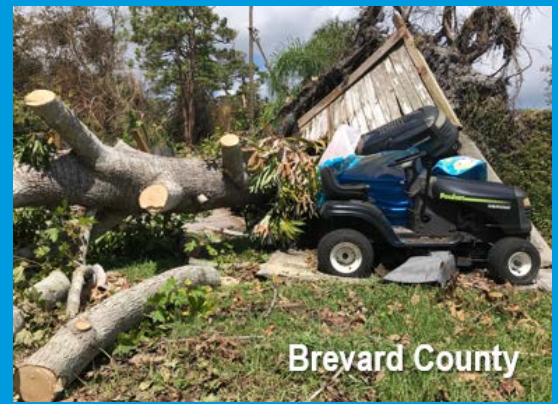




Hardening is focused on:

- ▶ Installing stronger poles
- ▶ Shortening span lengths
- ▶ Inspecting all power poles for strength/loading
- ▶ Clearing vegetation near power lines
- ▶ Converting overhead facilities to underground

During Hurricane Irma, most outages caused by wind-blown debris, trees



FPL's Storm Secure Underground Program Overview

- ▶ Why convert laterals to underground?
- ▶ Improve reliability and resiliency

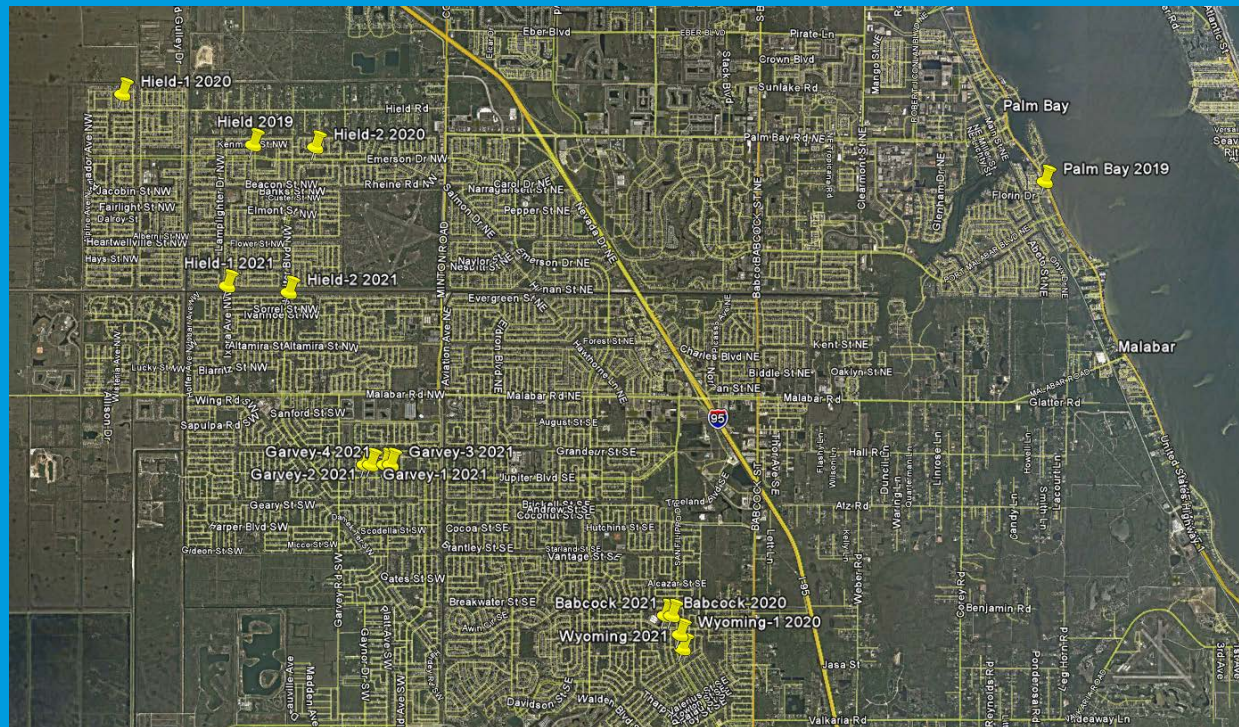
50%
better in
day-to-day
operations

Speeds
restoration
efforts

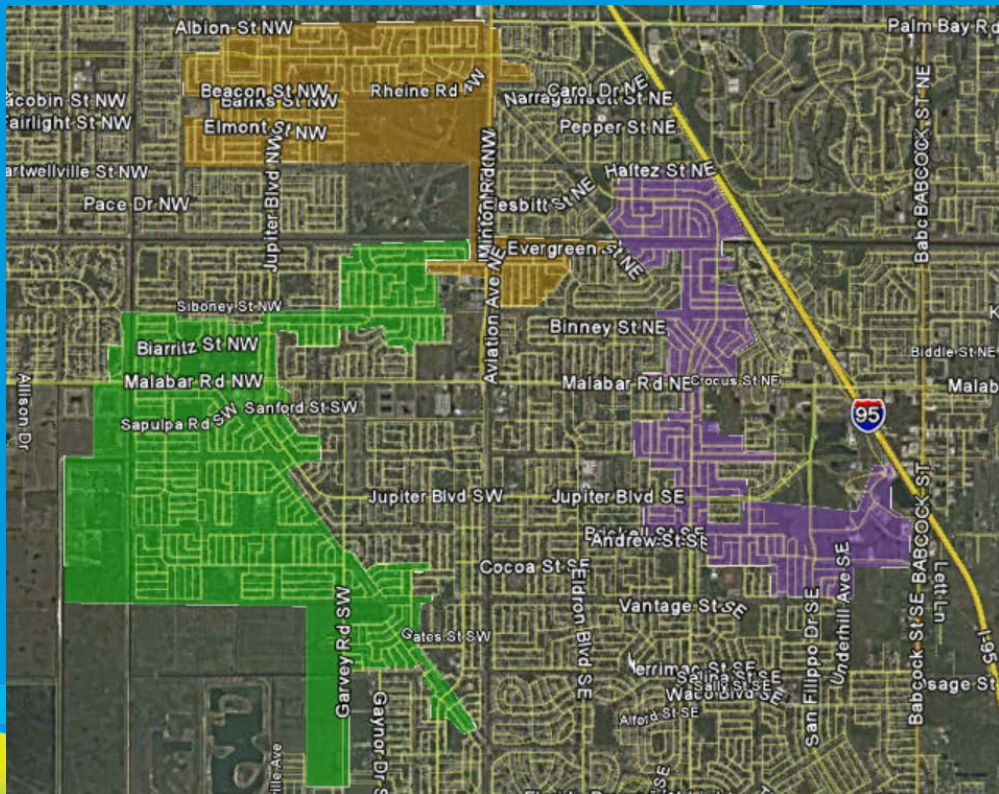
Reduces
vegetation
interruptions

SSUP Previous Work in Palm Bay

- ▶ 7.92 miles
- ▶ 422 customers
- ▶ 16 laterals

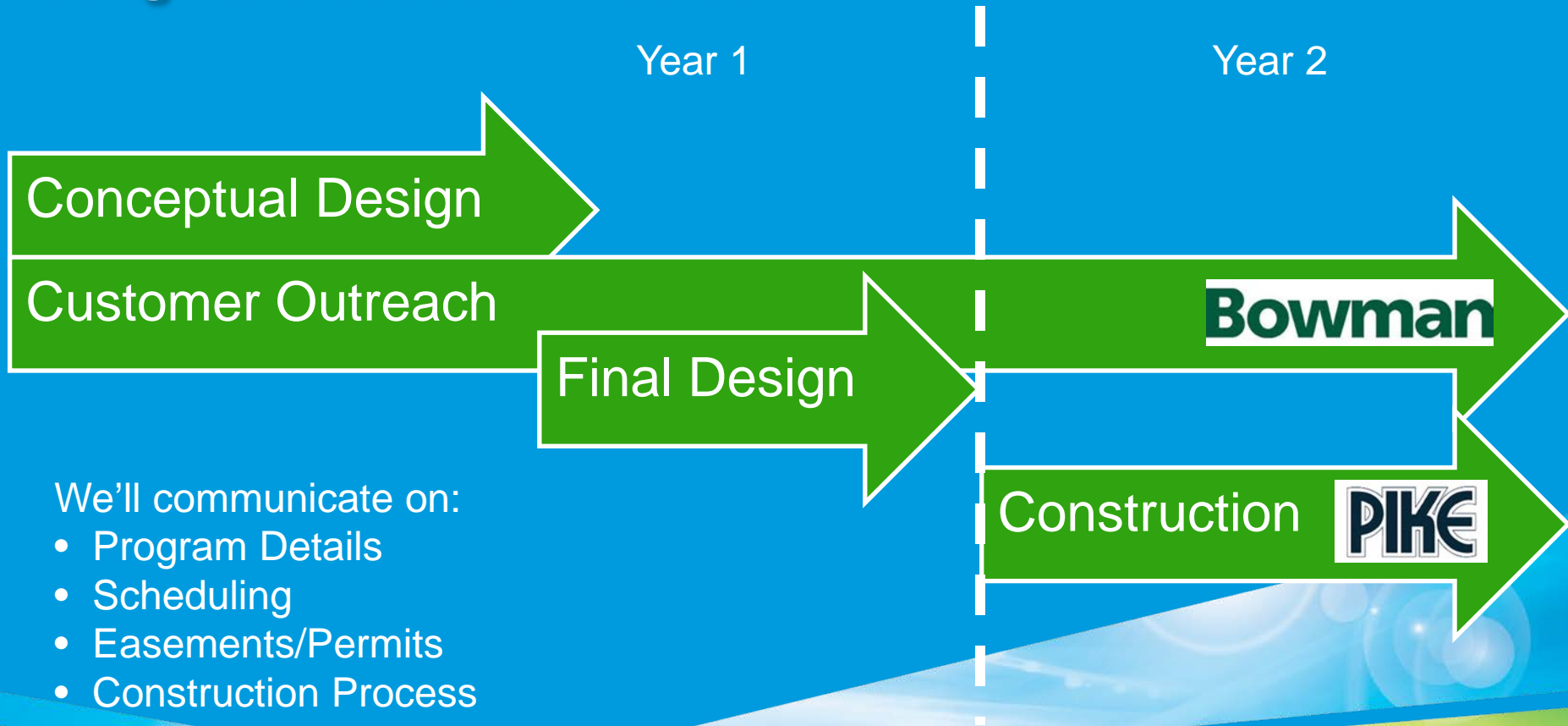


In the Palm Bay area, we have identified the following projects



- ▶ 123.5 miles of power lines
- ▶ ~8300 customers

Design and Outreach Process



Overview of Project



Equipment that will be commonly used in undergrounding projects



**Directional
Boring**



Equipment that will be commonly used in undergrounding projects



Horizontal or
directional boring
equipment



Cable reel

Equipment that will be commonly used in undergrounding projects



Meter enclosure
adapter box
connected to
meter enclosure



Equipment that will be commonly used in undergrounding projects



Pad-mounted transformer



Handhole

Prior Completed Projects





FPL®



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mehul Parekh, Public Works Director; Christopher Littles, P.E.

DATE: 1/6/2022

RE: Ordinance 2021-83, vacating a portion of the road right-of-way known as Mercury Avenue SE located within Port Malabar Unit 40 (0.722 acres) (Case VRW-3-2021, Mercury Avenue LLC and Mercury Avenue Too LLC), final reading.

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

Vacation of Street/Right of Way is requested to vacate all of Mercury Avenue SE Right-of-Way lying South of the South Right-of-Way of Lockheed Street SE extended Easterly, as recorded in Port Malabar Unit Forty, in Plat Book 21, Pages 29- 33, of the Public Records of Brevard County, Florida.

Staff recommends the approval of this request with the following conditions of the Palm Bay Utilities and Public Works departments.

The Palm Bay Utilities Department will not object to this request upon the following conditions:

1. The Utility Agreement(s) must be modified for the properties immediately adjacent to the right of way to be vacated. Note that the Utilities Department will make all document adjustments and submit to the applicant/owner for review, approval, and payment (if necessary).
2. Any design, permitting and/or construction required to modify the water/sewer utilities will be performed at the full expense of the applicant.
3. All water meters within the vacated portion must be replaced with a master meter that will be located at the City's right-of-way. The Applicant will be required to accept ownership of all water main located on private property. Plans must be submitted to the City for review and approval.
4. The Applicant will be required to accept ownership of all gravity sewer located on private property. The Utilities Department must be granted ingress/egress access to this gravity sewer for inspection purposes and to ensure compliance with Title XX of the Code of Ordinances.

Public Works Department will not object to this request upon the following conditions:

1. Utility easement for existing utilities within the vacated areas.
2. Any storage lost from filling Mercury Avenue R/W drainage shall be considered and incorporated in the site

plan drainage calculations

3. Pre post conditions; historical drainage to this right-of-way shall not be blocked

4. Appropriate signage on the north end for City road new T- intersection and right of way.

5. Vacating and easements contingent on Site plan approval and permitting.

Additionally, AT&T has facilities within the right-of-way and will agree to the vacate if a utility easement encompassing AT&T facilities is documented with Brevard County by the requestor of the vacate prior to, or in conjunction with, the vacate, so that AT&T facilities can remain in place without interruption. The Public Works Department supports this condition.

REQUESTING DEPARTMENT:

Utilities, Public Works

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to authorize the vacation of certain right-of-way with the following conditions of the Palm Bay Utilities Department and Public Works Department.

ATTACHMENTS:

Description

LEGISLATIVE MEMORANDUM - VRW-3-2021

Ordinance 2021-83

Ordinance 2021-83, Exhibit A

PUBLIC WORKS DEPARTMENT STAFF REPORT

REQUEST TO VACATE EASEMENT

PROPOSAL: Vacation of Street/Right of Way is requested to vacate all of Mercury Avenue SE Right-of-Way lying South of the South Right-of-Way of Lockheed Street SE extended Easterly, as recorded in Port Malabar Unit Forty, in Plat Book 21, Pages 29- 33, of the Public Records of Brevard County, Florida.

LOCATION: Parcel ID's: 29-37-03-26-1987-7; 29-37-03-26-1987-8; 29-37-03-26-1987-9; 29-37-03-26-1987-10; 29-37-03-26-1987-11; and 29-37-03-26-1987-12.

APPLICANT: Mercury Ave. LLC and Mercury Ave. Too LLC (Steven Bresnick).

SITE DATA

PRESENT ZONING: RM-20, Multiple-Family Residential zoning district

AREA OF VACATING: 0.722 Acres +/-

**ADJACENT ZONING
& LAND USE:** N RM-20, Multiple-Family Residential zoning district
E RM-20, Multiple-Family Residential zoning district
S RM-20, Multiple-Family Residential zoning district
W RM-20, Multiple-Family Residential zoning district

STAFF ANALYSIS:

The purpose of requesting vacating of the road right of way is to allow the owner of the property to build a proposed multi-family residential complex. It is unlikely that a third-party user remains for this road and/or right-of-way.

Vacating of the road right-of-way will not necessitate changes to any traffic circulation system for the development along Mercury Ave. or Lockheed St.

The Palm Bay Utilities Department will not object to this request upon the following conditions:

1. The Utility Agreement(s) must be modified for the properties immediately adjacent to the right of way to be vacated. Note that the Utilities Department will make all document adjustments and submit to the applicant/owner for review, approval, and payment (if necessary).
2. Any design, permitting and/or construction required to modify the water/sewer utilities will be performed at the full expense of the applicant.
3. All water meters within the vacated portion must be replaced with a master meter that will be located at the City's right-of-way. The Applicant will be required to accept ownership of all water main located on private property. Plans must be submitted to the City for review and approval.
4. The Applicant will be required to accept ownership of all gravity sewer located on private property. The Utilities Department must be granted ingress/egress access to this gravity sewer for inspection purposes and to ensure compliance with Title XX of the Code of Ordinances.

Public Works Department will not object to this request upon the following conditions:

1. Utility easement for existing utilities within the vacated areas.
2. Any storage lost from filling Mercury Avenue R/W drainage shall be considered and incorporated in the site plan drainage calculations
3. Pre post conditions; historical drainage to this right-of-way shall not be blocked
4. Appropriate signage on the north end for City road new T- intersection and right of way.
5. Vacating and easements contingent on Site plan approval and permitting.

Spectrum, and Florida Power & Light have no objections to the request.

AT&T has facilities within the right-of-way and will agree to the vacate if a utility easement encompassing AT&T facilities is documented with Brevard County by the requestor of the vacate prior to or in conjunction with the vacate so AT&T facilities can remain in place without interruption.

STAFF RECOMMENDATION:

Staff recommends approval of the request with the following conditions:

The Palm Bay Utilities Department will not object to this request upon the following conditions:

1. The Utility Agreement(s) must be modified for the properties immediately adjacent to the right of way to be vacated. Note that the Utilities Department will make all document adjustments and submit to the applicant/owner for review, approval, and payment (if necessary).
2. Any design, permitting and/or construction required to modify the water/sewer utilities will be performed at the full expense of the applicant.
3. All water meters within the vacated portion must be replaced with a master meter that will be located at the City's right-of-way. The Applicant will be required to accept ownership of all water main located on private property. Plans must be submitted to the City for review and approval.
4. The Applicant will be required to accept ownership of all gravity sewer located on private property. The Utilities Department must be granted ingress/egress access to this gravity sewer for inspection purposes and to ensure compliance with Title XX of the Code of Ordinances.

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4. Appropriate signage on the north end for City road new T- intersection and right of way.
5. Vacating and easements contingent on Site plan approval and permitting.

AT&T has facilities within the right-of-way and will agree to the vacate if a utility easement encompassing AT&T facilities is documented with Brevard County by the requestor of the vacate prior to or in conjunction with the vacate so AT&T facilities can remain in place without interruption.



CLUB POLICE

Know what's below.

Call before you dig!

GALILEO SCALE

(see right)

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10

20

30

40

50

60

70

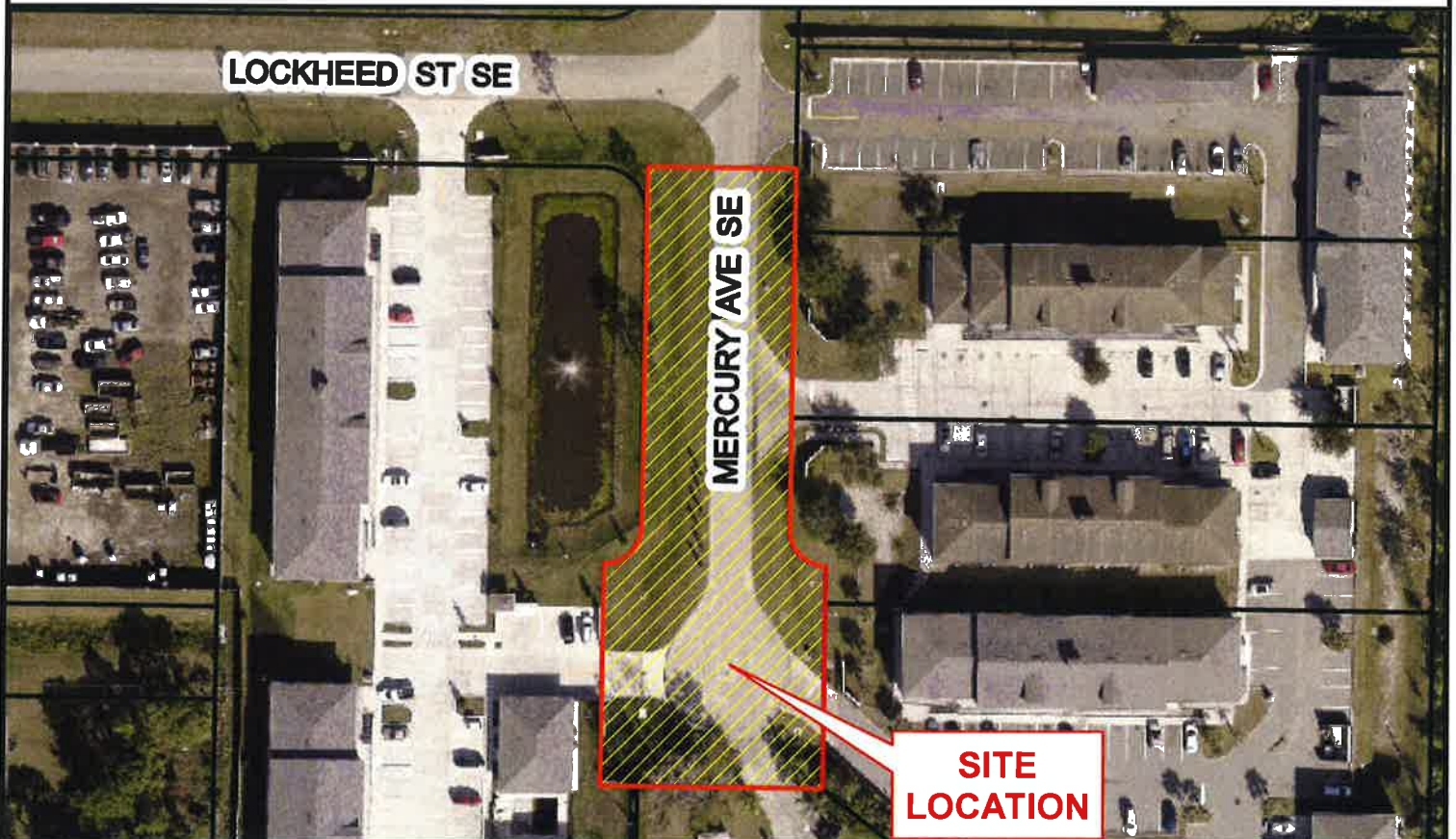
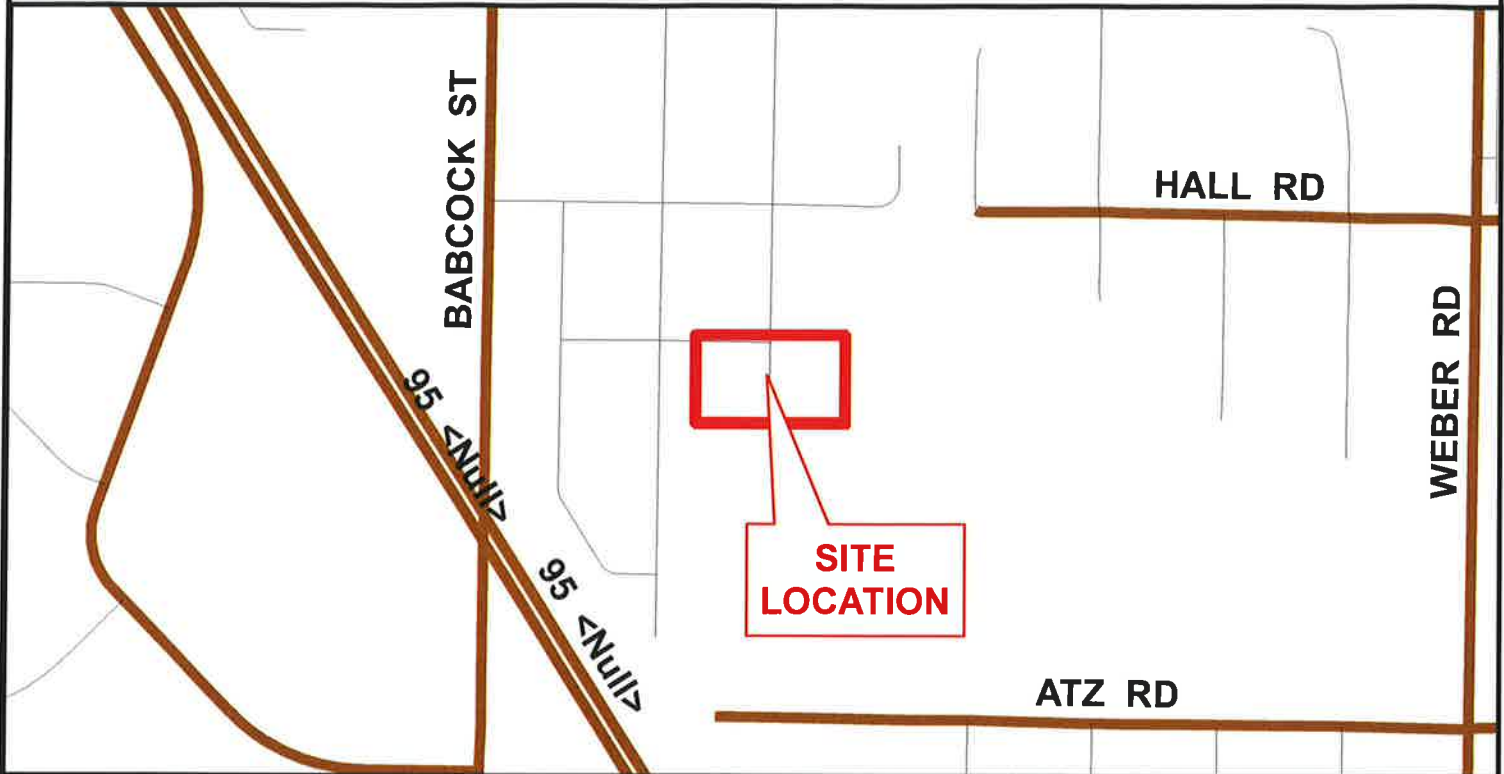
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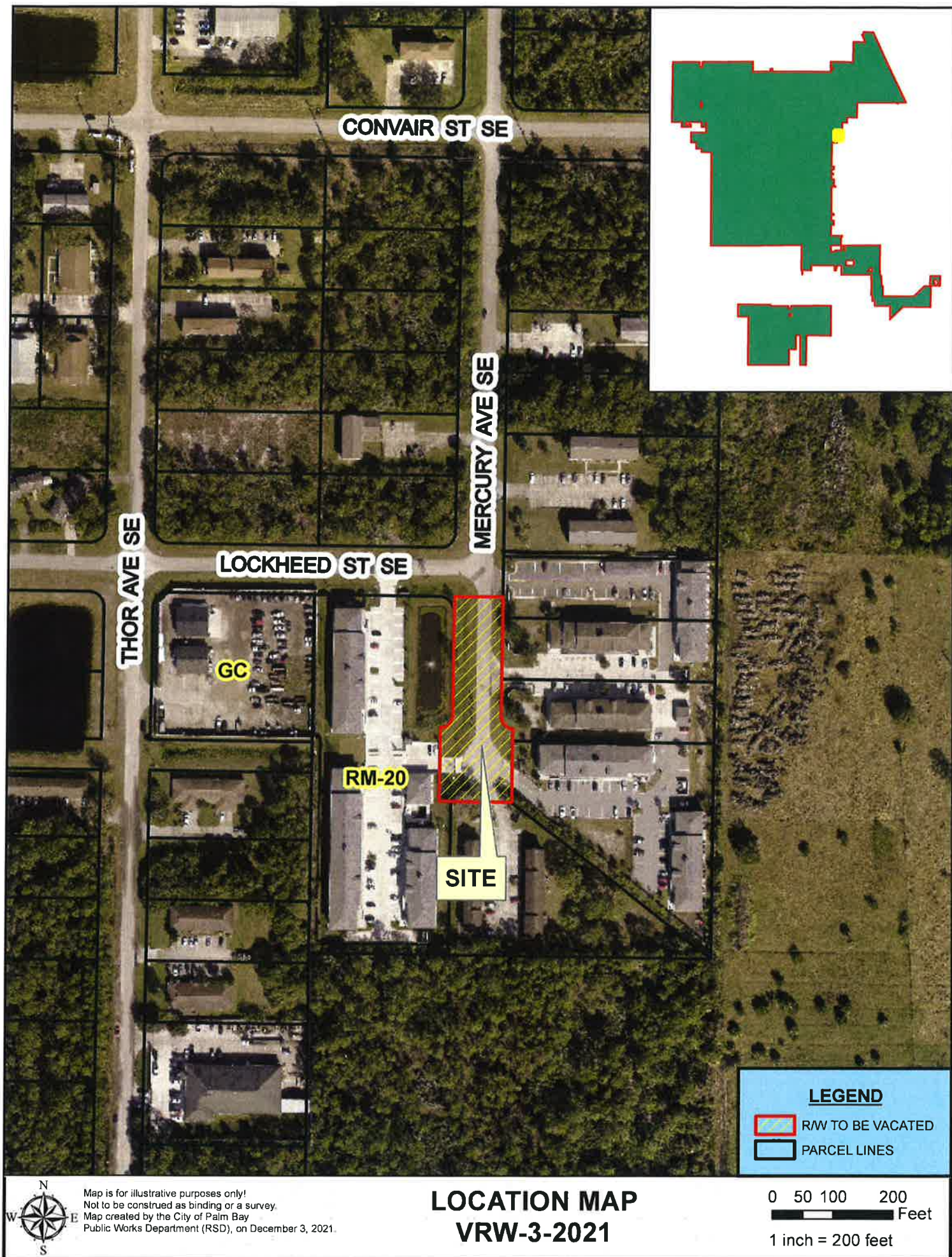
LOCATION MAP



Map is for illustrative purposes only!
Not to be construed as binding or a survey.
Map created by the City of Palm Bay
Public Works Department (RSD), on December 3, 2021.

VRW-3-2021

0 25 50 100
Feet
1 inch = 100 feet





PUBLIC WORKS DEPARTMENT

1050 MALABAR ROAD SW PALM BAY, FLORIDA 32907

PHONE: (321) 952-3403

EMAIL: pwpermitting@palmbayflorida.org

VRW-3-2021

**CREATING, IMPROVING, ALTERING, AND VACATING OF
STREETS/RIGHT-OF-WAY APPLICATION**

This application must be completed, legible, and returned, with all enclosures referred to herein, to the Public Works Department, Palm Bay, Florida. The request will then be reviewed by City staff and scheduled for a public hearing before the City Council. You and/or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). Meeting(s) will be held beginning at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida, unless otherwise stated.

1. Name of Applicant (Please print): Mercury Avenue LLC and Mercury Avenue Too LLC - Steven Bresnick

Address: 6671 W. Indiantown Road, # 56383

City: Jupiter, FL

Zip Code: 33458

Phone Number: 561-827-2828

Fax Number: _____

Email: bresnick.steven@gmail.com

2. Certified surveyor's legal description of property covered by this application:

Lots 7 through Lot 13, Block 1987, Port Malabar, Unit Forty, Plat Book 21 Pages 29 through 33.

Section: 03

Township: 29

Range: 37

3. Size of area covered by this application (calculate acreage): .72

4. Which action applying for (Creating, Improving, Altering, or Vacating): Vacate Road ROW

5. Intended use of the property: Vacate Road ROW and replace with easement for utilities and drainage rights of way. Partial ROW Vacate will allow for the creation of a unified gated apartment complex and an additional 32 apartment units.

6. The following enclosures are needed to complete this application:

- ☒ *\$312.00 Application Fee. Make check payable to "City of Palm Bay."
- ☒ Two (2) copies of the plat or site plan exhibit drawn to scale shall be attached to the application. The exhibit shall also be provided by CD or Memory Drive and illustrate the following:
 - a) (Proposed) street location within the City (vicinity map);
 - b) Location of utility easements adjacent or pertinent thereto the property;
 - c) Construction plans showing typical street profiles and materials;
 - d) Tree and vegetation survey and/or permit;
 - e) Location of traffic control devices (signs and street markings);
 - f) Location of sidewalks and bikeways.
- ☒ Original notarized letters from the following utility and service companies are required stating that the companies have no objections to the requested action:
 - a) Florida Power & Light Company;
 - b) AT&T Telecommunications;
 - c) Spectrum Cable;
 - d) Melbourne-Tillman Water Control District (if applicable);
 - e) Florida City Gas (if applicable);
 - f) Holiday Park, Board of Directors (if applicable).
- ☒ List of all property owners, addresses, and legal descriptions for all properties abutting the (proposed) street. Such information shall be obtained from the most recent County tax rolls. (This can be obtained from the most recent County tax rolls. (This can be obtained from the Brevard County Planning and Zoning Department at 321-633-2060, or on the internet at <https://bcpao.us/>) List shall be legible and the source of that information stated here:

Ordered from Brevard County

7. Where property is not owned by the applicant, a letter must be attached giving the notarized consent of the owner for the applicant to request the creating, improving, altering, or vacating of streets/right of way.

I, the undersigned understand that this application must be complete and accurate before consideration by city council, and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalty of perjury, I declare that I have read the foregoing Creating, Improving, Altering, and Vacating of Streets/Right of Way Application and that the facts stated in it are true.

Signature of Applicant: _____ Date: 9/14/21

Printed Name of Applicant: Steven Bresnick, Manager Mercury Avenue LLC

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CREATING, IMPROVING, ALTERING, AND VACATING OF STREETS/RIGHT-OF-WAY
APPLICATION | Rev052020**

September 13, 20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

Lots 7 through Lot 13, Block 1987, Port Malabar, Unit Forty, according to the plat thereof, as recorded in Plat Book 21, Pages 29 through 33, Public Records of Brevard County, Florida

I, Owner Name: Steven Bresnick, Manager, Mercury Avenue and Mercury Ave Too, LLC

Address: 471 Mercury Avenue, SE, Palm Bay 32909

Telephone: 561-827-2828

Email: bresnick.steven@gmail.com

hereby authorize:

Representative: David Bassford, P.E., MBV Engineering, Inc.

Address: 1250 W. Eau Gallie Blvd, Suite H, Melbourne, FL 32935

Telephone: 321-253-1510

Email: davidb@mbveng.com

to represent the request(s) for:

Road ROW Vacate

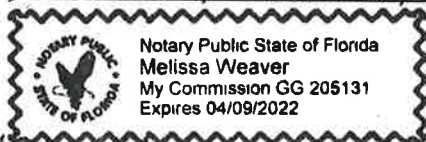
(Property Owner Signature)

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 14th day of September, 20 21 by

Steven Bresnick, property owner.



Melissa Weaver, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

ORDINANCE 2021-83

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE ROAD RIGHT-OF-WAY KNOWN AS MERCURY AVENUE SE, AS RECORDED IN PLAT BOOK 21, PAGE 32, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Mercury Avenue LLC and Mercury Avenue Too LLC, has requested the City of Palm Bay, Florida, to vacate a portion of the road right-of-way known as Mercury Avenue SE, which portion is legally described herein, and

WHEREAS, the vacating and abandonment of said road right-of-way will neither adversely affect nor benefit the public.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay hereby vacates and abandons a portion of the road right-of-way known as Mercury Avenue SE, being more particularly described herein as Exhibit 'A'.

SECTION 2. The vacating of the road right-of-way is subject to compliance with the following conditions:

- A. The Utility Agreement(s) shall be modified for the properties immediately adjacent to the right-of-way to be vacated. Note that the Utilities Department will make all document adjustments and submit to the applicant/owner for review, approval, and payment (if necessary);
- B. Any design, permitting and/or construction required to modify the water/sewer utilities will be performed at the full expense of the applicant;
- C. All water meters within the vacated portion shall be replaced with a master meter that will be located at the City's right-of-way. The applicant will be required to accept ownership of all water mains located on private property. Plans shall be submitted to the City for review and approval;

- D. The applicant will be required to accept ownership of all gravity sewer located on private property. The Utilities Department must be granted ingress/egress access to this gravity sewer for inspection purposes and to ensure compliance with Title XX of the Code of Ordinances;
- E. Utility easement for existing utilities within the vacated areas;
- F. Any storage lost from filling Mercury Avenue right-of-way drainage shall be considered and incorporated in the site plan drainage calculations;
- G. Pre post conditions; historical drainage to this right-of-way shall not be blocked;
- H. Appropriate signage on the north end for City road new T- intersection and right-of-way;
- I. Vacating and easements contingent on site plan approval and permitting; and
- J. A utility easement encompassing AT&T facilities, documented with Brevard County by the requestor of the vacate prior to, or in conjunction with, the vacate, so that AT&T facilities can remain in place without interruption.

SECTION 3. This ordinance shall be recorded at the expense of the applicant following receipt of all documentation required as a condition of the approval. Failure to meet the conditions within one (1) year from the date of approval for the request shall render the ordinance null and void.

SECTION 4. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021- , held on , 2021; and
read in title only and duly enacted at Meeting 2021- , held on , 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

City of Palm Bay, Florida

Ordinance 2021-83

Page 3 of 3

Reviewed by CAO: _____

Applicant: Mercury Avenue LLC and Mercury Avenue Too LLC

Case: VRW-3-2021

cc: (date) Brevard County Recording
Applicant
Case File

LEGAL

A PORTION OF MERCURY AVENUE BEING 80 FEET WIDE AND BEING A PORTION OF PORT MALABAR UNIT FORTY, AS DESCRIBED IN PLAT BOOK 21, PAGES 29-33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 13 BLOCK 1987 AND THE WEST RIGHT OF WAY OF MERCURY AVENUE; THENCE RUN S0°32'09"W ALONG THE WEST RIGHT OF WAY OF MERCURY AVENUE A DISTANCE OF 193.64 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE RIGHT; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 31.42 FEET, A CENTRAL ANGLE OF 90°00'00" AND A RADIUS OF 20.00 FEET TO THE NORTHEAST CORNER OF A 50.00 FOOT DRAINAGE RIGHT OF WAY; THENCE S 0°32'09"W ALONG THE EASTERLY LINE OF THE 50.00 FOOT DRAINAGE RIGHT OF WAY AND THE EASTERLY LINE OF LOT 12, BLOCK 1987 AND BEING THE WESTERLY RIGHT OF WAY OF MERCURY AVENUE A DISTANCE OF 120.00 FEET TO THE SOUTHWEST CORNER OF MERCURY AVENUE; THENCE S 89°27'51"E ALONG THE SOUTH LINE OF MERCURY AVENUE AND ALSO THE NORTH LINE OF LOT 11 AND 12, BLOCK 1987, A DISTANCE OF 120.00 FEET TO THE SOUTHEAST CORNER OF MERCURY AVENUE AND ALSO THE NORTHEAST CORNER OF LOT 11, BLOCK 1987 AND ALSO BEING THE SOUTHWEST CORNER OF LOT 10, BLOCK 1987; THENCE N 0°32'09"E ALONG THE EASTERLY RIGHT OF WAY OF MERCURY AVENUE A DISTANCE OF 120.00 FEET TO A CURVE CONCAVE TO THE RIGHT; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 31.42 FEET, A CENTRAL ANGLE OF 90°00'00" AND A RADIUS OF 20.00 FEET TO THE EASTERLY RIGHT OF WAY OF MERCURY AVENUE, THENCE N 0°32'09"E ALONG THE EASTERLY RIGHT OF WAY OF MERCURY AVENUE AND ALSO THE WESTERLY LINE OF LOTS 9,8 AND A PORTION OF LOT 7, BLOCK 1987 A DISTANCE 193.64 FEET; THENCE N 89°27'51"W A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2021-85, rezoning property located at the northwest corner of Robert J. Conlan Boulevard and Commerce Park Drive, from LI (Light Industrial and Warehousing District) to BMU (Bayfront Mixed Use District) (7.11 acres) (Case CPZ-11-2021, NSD Palm Bay IV, LLC), final reading. (Quasi-Judicial Proceeding)

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

Mr. Andrew Steel, NSD Palm Bay IV, LLC (Ana Saunders, P.E. and Miguel Reynaldos, Reps.) has submitted a rezoning of the subject parcel from LI, Light Industrial and Warehousing District, to the BMU, Bayfront Mixed Use District. The subject properties have remained undeveloped since their creation and are located at the northwest corner of Robert J. Conlan Boulevard NE and Commerce Park Drive NE.

The applicant has indicated that the proposed change will reflect the current zoning upgrades to the Bayfront Mixed Use district as noted across Robert J. Conlan Boulevard. The zoning change will allow for a transition between the existing single-family homes in the Powell Subdivision and the existing businesses. It will also help to revitalize the area.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CPZ-11-2021.

Planning and Zoning Board Recommendation:

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

Motion to submit Case CPZ-11-2021 to City Council for approval.

Motion by Mr. Boerema, seconded by Ms. Jordan. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

ATTACHMENTS:

Description

Case CPZ-11-2021 - Staff Report

Case CPZ-11-2021 - Survey

Case CPZ-11-2021 - Application

Ordinance 2021-85



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

CPZ-11-2021

PLANNING & ZONING BOARD HEARING DATE

July 7, 2021

PROPERTY OWNER & APPLICANT

NSD Palm Bay IV, LLC

PROPERTY LOCATION/ADDRESS

Tax Parcels 250 and 254, Section 14, Township 28,
Range 37, Brevard County, Florida

SUMMARY OF REQUEST

The applicant is requesting a rezoning of the subject parcels from LI, Light Industrial and Warehousing District, to the BMU, Bayfront Mixed Use District.

Existing Zoning

LI, Light Industrial and Warehousing District

Existing Land Use

Industrial Use

Site Improvements

Undeveloped Land

Site Acreage

7.11 acres

SURROUNDING ZONING & USE OF LAND

North

LI, Light Industrial and Warehousing District Use; Vacant Land

East

Robert J. Conlan Boulevard NE

South

Commerce Park Drive NE

West

LI Zoning – 50' wide drainage ditch and RM-20, Multiple Family Residential District; Current under construction for an apartment complex

BACKGROUND:

The subject properties are located at the northwest corner of Robert J. Conlan Boulevard NE and Commerce Park Drive NE. The parcels have remained undeveloped land since their creation.

ANALYSIS:

The following analysis is per Chapter 185: Zoning Code, Section 185.201(C) which states that all proposed amendments shall be submitted to the Planning and Zoning Board, which shall study such proposals in accordance with items 1 through 4 of Section 185.201(C).

Item 1 - *The need and justification for the change.*

The applicant states the justification for change is “to change the zoning district to reflect the current zoning upgrades to Bayfront Mixed Use as noted across Robert J. Conlan.” The Bayfront Mixed Zoning District will allow for a mix of commercial and multifamily uses. The change in zoning will allow for a transition between the existing single-family homes in the Powell Subdivision and the existing businesses and help to revitalize the area.

Item 2 - *When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and on surrounding properties.*

The designation of BMU zoning district for the subject properties is compatible with the surrounding area, and is consistent with the City’s desire and plan for redevelopment in the area.

Item 3 - *When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested.*

Approximately 50.29 acres of BMU, Bayfront Mixed Use zoned land is within the City limits.

Item 4 - *The relationship of the proposed amendment to the purpose of the city plan for development, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and the Comprehensive Plan (Plan).*

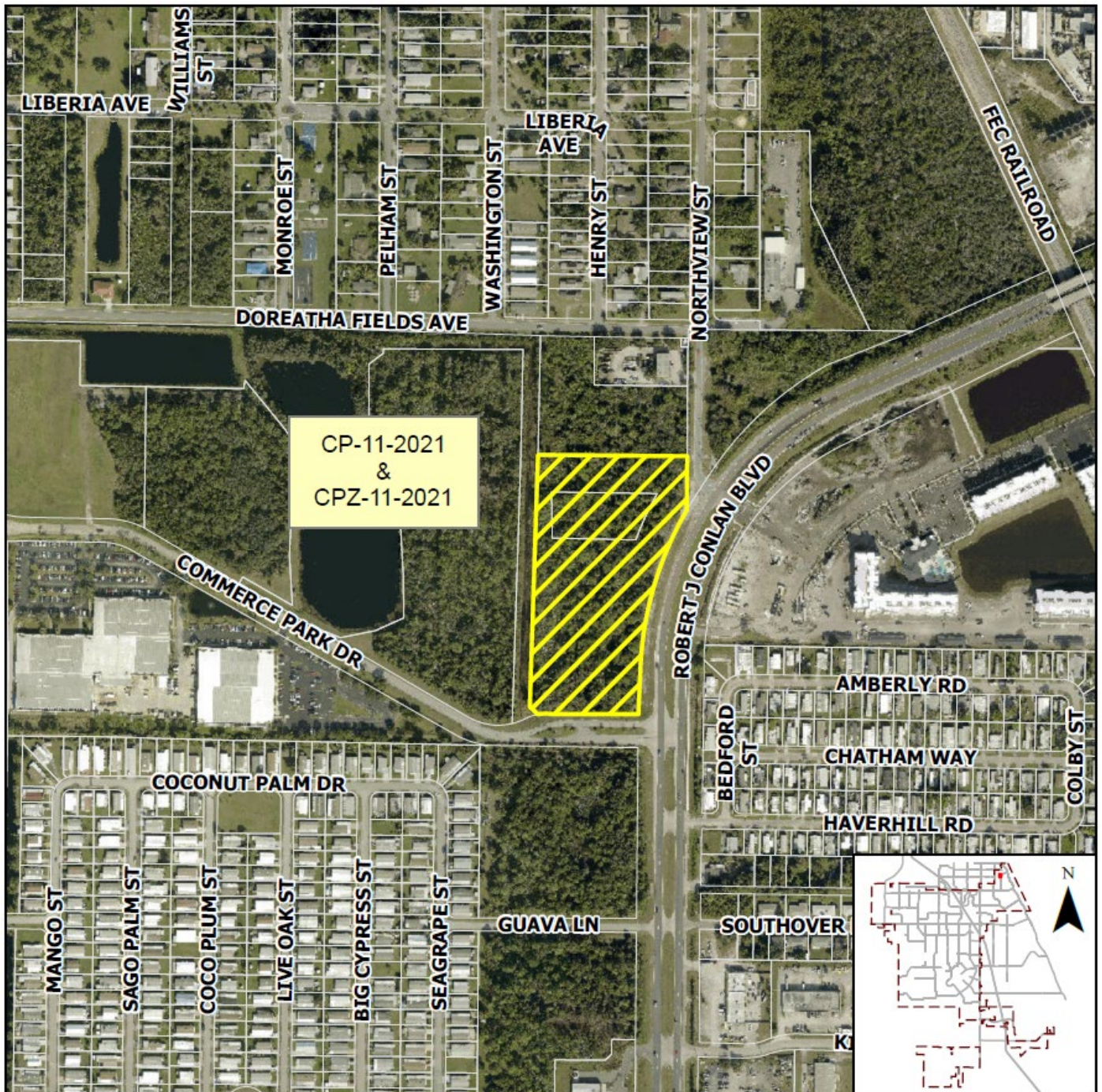
The proposed amendment will further the purposes of Chapter 185, the Comprehensive Plan.

STAFF RECOMMENDATION:

Case CPZ-11-2021 is recommended for approval.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



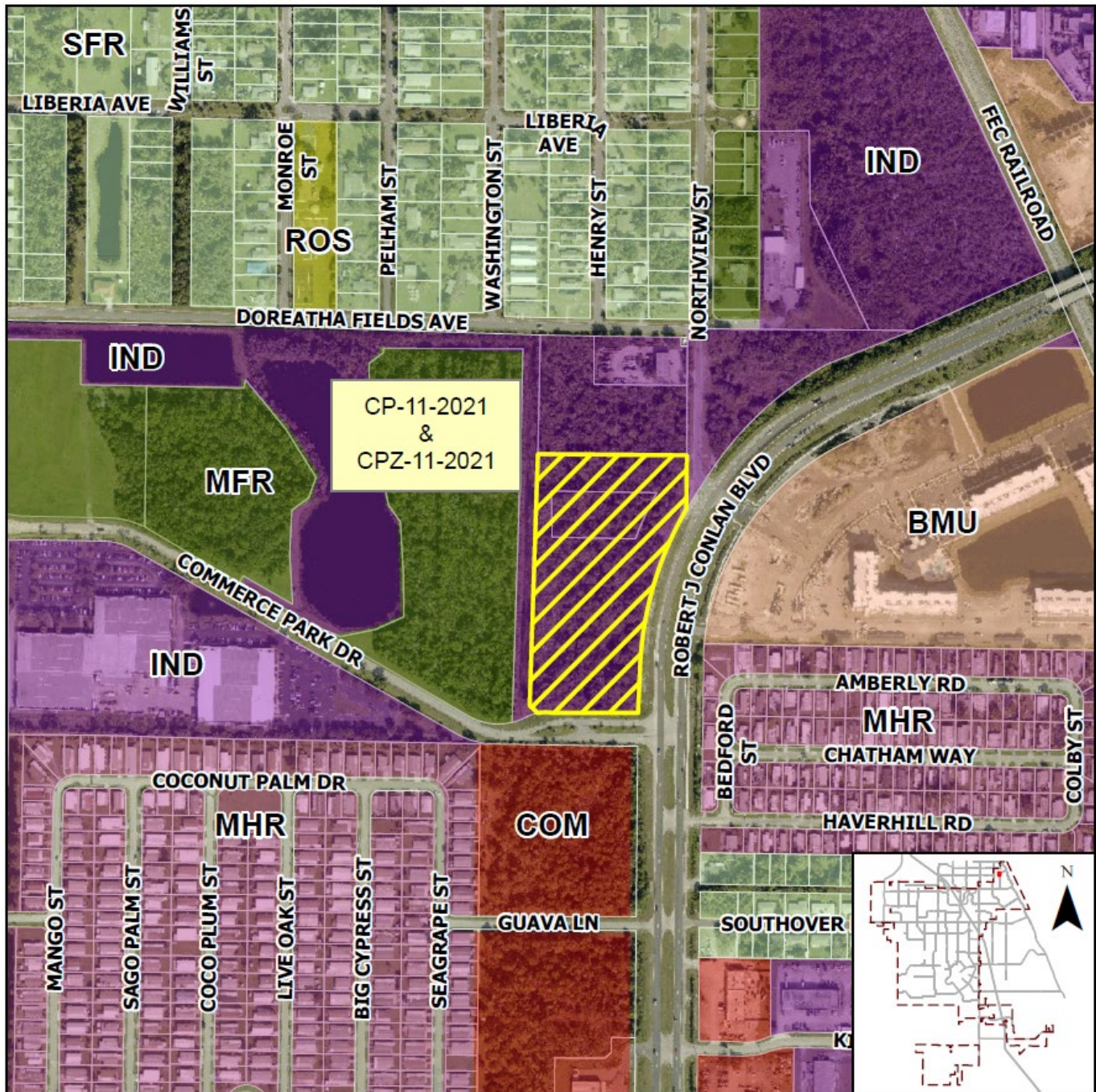
AERIAL LOCATION MAP CASE: CP-11-2021 & CPZ-11-2021

Subject Property

Northwest corner of Robert J. Conlan Boulevard NE and Commerce Park Road NE



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP CASE: CP-11-2021 & CPZ-11-2021

Subject Property

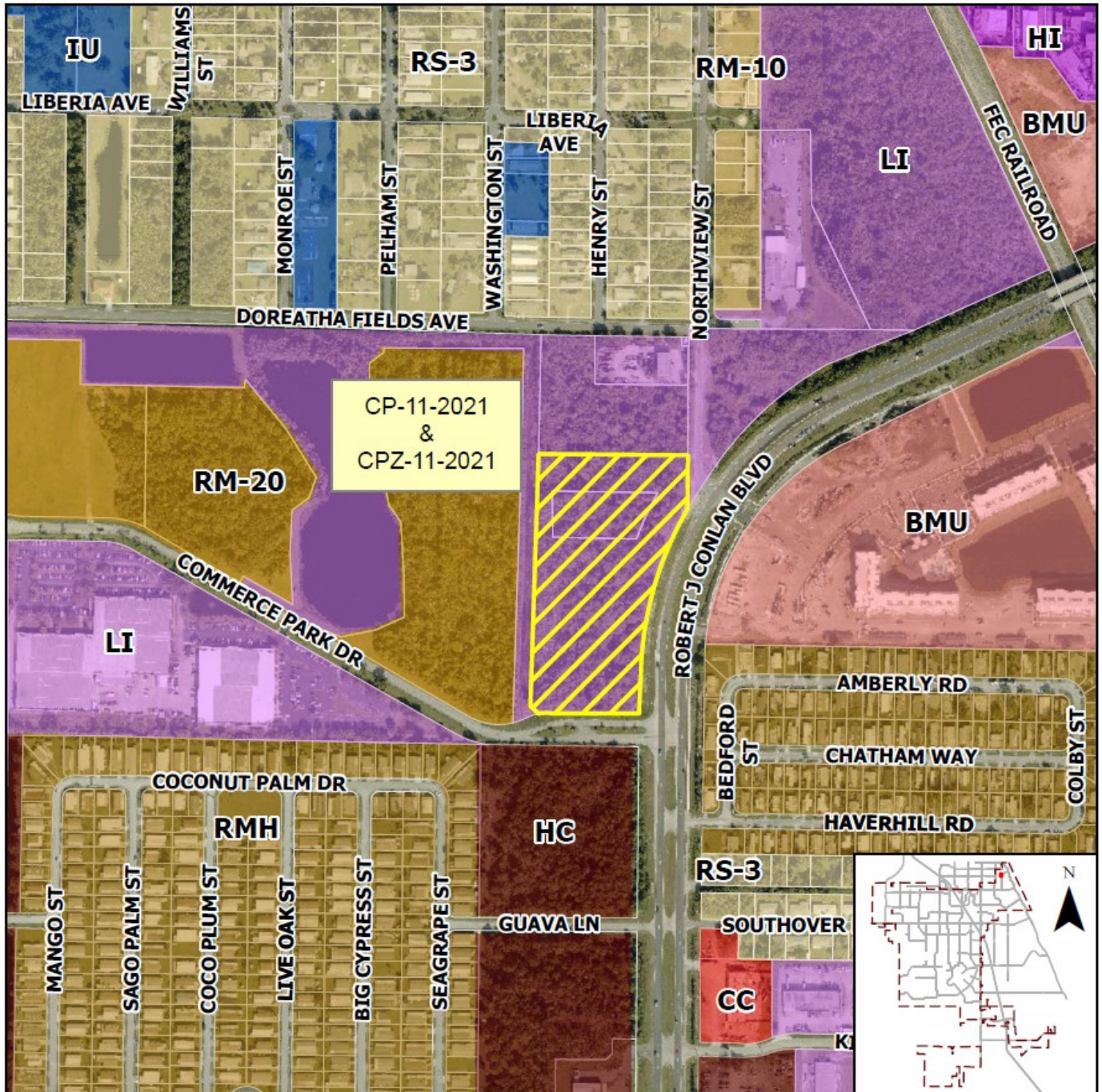
Northwest corner of Robert J. Conlan Boulevard NE and Commerce Park Road NE

Future Land Use Classification

IND – Industrial Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: CP-11-2021 & CPZ-11-2021

Subject Property

Northwest corner of Robert J. Conlan Boulevard NE and Commerce Park Road NE

Current Zoning Classification

LI – Light Industrial and Warehousing District



312 SOUTH HARBOR CITY BOULEVARD SUITE 4
MELBOURNE, FLORIDA 32901
PHONE (321) 725-1674 FAX (321) 723-1159

CERTIFICATE OF PROFESSIONAL ENGINEER
BUSINESS AUTHORIZATION #905
CERTIFICATE OF LAND SURVEYING
BUSINESS AUTHORIZATION LB0004905

SCOTT M. GLAUBITZ
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE NUMBER 4151

DESCRIPTION FROM EXHIBIT "A", OF THAT CERTAIN COMMONWEALTH LAND TITLE INSURANCE COMPANY, AMERICAN LAND TITLE ASSOCIATION COMMITMENT. ISSUING OFFICE FILE NUMBER 41200012675. CUSTOMER'S FILE NUMBER C20000332/NSD PALM BAY IV TW8660763. COMMITMENT DATE: JULY 23, 2020 AT 5:00 AM.

PART OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2792, PAGE 2180, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

[illegible]

ALL LYING AND BEING IN SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA

ITEMS NUMBERED BELOW ARE IN DIRECT RELATIONSHIP TO THOSE CONTAINED IN SCHEDULE B, SECTION II, EXCEPTIONS IN THAT CERTAIN COMMONWEALTH LAND TITLE INSURANCE COMPANY, AMERICAN LAND TITLE ASSOCIATION COMMITMENT, ISSUING OFFICE FILE NUMBER 4120001261S, CUSTOMER'S FILE NUMBER C200009332/NSD PALM BAY IV TW8860763, COMMITMENT DATE: JULY 23, 2020 AT 5:00 AM.

1. SURVEYOR KNOWS OF NO DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS, IF ANY, CREATED, FIRST APPEARING IN THE PUBLIC RECORDS ON ATTACHING SUBSEQUENT TO THE EFFECTIVE DATE HEREOF, BUT PRIOR TO THE DATE THE PROPOSED INSURED ACQUIRES FOR VALUE OF RECORD THE ESTATE OR INTEREST OR MORTGAGE THEREON COVERED BY THIS FORM.
2. TAXES AND ASSESSMENTS FOR THE YEAR 2018 AND SUBSEQUENT YEARS, WHICH ARE NOT YET DUE AND PAYABLE. NOT A SURVEY MATTER
3. STANDARD EXCEPTIONS:
- a OTHER THAN AS MAY BE SHOWN AND/OR NOTED HEREON, SURVEYOR HAS NO KNOWLEDGE OF ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE THAT WOULD BE DISCLOSED BY AN ACCURATE AND COMPLETE LAND SURVEY OF THE LAND.
- b SURVEYOR HAS NO KNOWLEDGE OF ANY RIGHTS OR CLAIMS OF PARTIES IN POSSESSION NOT SHOWN BY THE PUBLIC RECORDS.
- c SURVEYOR HAS NO KNOWLEDGE OF ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR, OR MATERIALS HERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.
- d TAXES OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS IN THE PUBLIC RECORDS. NOT A SURVEY MATTER
4. ITEM 4 HAS BEEN INTENTIONALLY DELETED
5. TERMS AND PROVISIONS SET FORTH IN EASEMENT DEDICATION RECORDED IN OFFICIAL RECORDS BOOK 2656, PAGE 811 AND RE-RECORDED IN OFFICIAL RECORDS BOOK 2682, PAGE 1198. AFFECTS PROPERTY. EASEMENTS ARE NOT PLOTTABLE FROM INFORMATION CONTAINED WITHIN REFERENCED DOCUMENTS
6. COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS, INCLUDING, BUT NOT LIMITED TO, PROVISIONS FOR PRIVATE CHARGES OR ASSESSMENTS (DELETING THEREFROM ANY COVENANTS OR RESTRICTIONS, IF ANY, INDICATING ANY PREference, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILY STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SUCH COVENANTS OR RESTRICTIONS BE PERMITTED BY APPLICABLE LAW AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOODLAKE COMMERCIAL CENTER RECORDED JUNE 13, 1999 IN OFFICIAL RECORDS BOOK 9001, PAGE 1541, AS AFFECTED BY MODIFICATION RECORDED IN OFFICIAL RECORDS BOOK 3093, PAGE 3883, ASSIGNMENT OF DECLARANT'S RIGHTS RECORDED DECEMBER 18, 2014 IN OFFICIAL RECORDS BOOK 7268, PAGE 1242 AND TOGETHER WITH BY-LAWS OF WOODLAKE COMMERCIAL CENTER PROPERTY OWNERS ASSOCIATION, INC. RECORDED DECEMBER 18, 2014 IN OFFICIAL RECORDS BOOK 7289, PAGE 1247. AFFECTS PROPERTY, NO EASEMENT INFORMATION FOUND IN DOCUMENTS, NOT A SURVEY MATTER
7. TERMS, PROVISIONS AND OBLIGATIONS SET FORTH IN THAT CERTAIN EASEMENT AND CROSS ACCESS AGREEMENT RECORDED JUNE 6, 2005 IN OFFICIAL RECORDS BOOK 5478, PAGE 1516. PLOTTED AND SHOWN HEREOF
8. TERMS AND PROVISIONS SET FORTH IN CITY OF PALM BAY WATER AND WASTEWATER SYSTEM AGREEMENT RECORDED SEPTEMBER 2, 2008 IN OFFICIAL RECORDS BOOK 5885, PAGE 3514. AFFECTS PROPERTY, NO PLOTTABLE EASEMENTS FOUND IN DOCUMENT, BLANKET TYPE
9. EASEMENT BY AND BETWEEN WOODLAKE COMMERCIAL CENTER PROPERTY OWNERS ASSOCIATION, INC., A FLORIDA NON PROFIT CORPORATION, GRANTOR, AND NED PALM BAY III, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND NSD PALM BAY, IV, LLC, A FLORIDA LIMITED LIABILITY COMPANY, GRANTEE, RECORDED MAY 20, 2019, IN OFFICIAL RECORDS BOOK 8443, PAGE 1400. PLOTTED AND SHOWN HEREOF
10. ASSIGNMENT RECORDED MAY 20, 2019, IN OFFICIAL RECORDS BOOK 8443, PAGE 1426. NOT A SURVEY MATTER

ALTA CERTIFICATION:

TO : WOODLAKE COMMERCE CENTER, WOODLAKE SOUTH-WEST NO. 2, LTD., NSD PALM BAY II, LLC, NSD PALM BAY III, LLC, NSD PALM BAY IV, LLC, COMMONWEALTH LAND TITLE INSURANCE COMPANY, SANFORD N. REINHARD, P.A. SHUTTS & BOWEN LLP, WEST SHORE VENTURE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, CAPITAL PARTNERS WEST SHORE INVESTOR, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND CENTENNIAL BANK, ITS SUCCESSORS AND/OR ASSIGNS

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(1), 8, 9, 11, 13, 14, 16, 17, 18, 19 & 20 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON 09/22/2020.

ABBREVIATIONS

AC	AMPL. CONTROLLER
AD	ADD
BVO	BARO VACUUM
CL	CLOCK
CS	CLOCKING SIGNAL
EA	ENGINE ARMATURE
EC	ENGINE SPEED
ED	ENGINE DRIVE
EE	ENGINE ELECTRICAL
EP	ENGINE PUMP
ES	ENGINE SPEED
ET	ENGINE TEST
EV	ENGINE VALVE
EX	EXHAUST
FL	FLUID
FM	FLUID MOTOR
FO	FOOT
FR	FRONT
FS	FLUID SENSOR
FT	FLUID TEST
FX	FLUID EXHAUST
GA	GAS
GB	GAS BURNER
GC	GAS CONTROL
GD	GAS DRIVE
GE	GAS ENGINE
GF	GAS FLOW
GG	GAS GATE
GH	GAS HEAD
GI	GAS INLET
GJ	GAS JET
GK	GAS KNOB
GL	GAS LINE
GM	GAS MOTOR
GN	GAS NOZZLE
GO	GAS OIL
GP	GAS PUMP
GQ	GAS QUANTITY
GR	GAS RATIO
GS	GAS SENSITIVE
GT	GAS TEST
GU	GAS UNIT
GV	GAS VALVE
GW	GAS WEIGHT
GX	GAS EXHAUST
GY	GAS YIELD
HA	HAND
HB	HAND BURNER
HC	HAND CONTROL
HD	HAND DRIVE
HE	HAND ENGINE
HF	HAND FLOW
HG	HAND GATE
HH	HAND HEAD
HI	HAND INLET
HJ	HAND JET
HK	HAND KNOB
HL	HAND LINE
HM	HAND MOTOR
HN	HAND NOZZLE
HO	HAND OIL
HP	HAND PUMP
HQ	HAND QUANTITY
HR	HAND RATIO
HS	HAND SENSITIVE
HT	HAND TEST
HU	HAND UNIT
HV	HAND VALVE
HW	HAND WEIGHT
HX	HAND EXHAUST
HY	HAND YIELD
IA	INLET
IB	INLET BURNER
IC	INLET CONTROL
ID	INLET DRIVE
IE	INLET ENGINE
IF	INLET FLOW
IG	INLET GATE
IH	INLET HEAD
II	INLET INLET
IJ	INLET JET
IK	INLET KNOB
IL	INLET LINE
IM	INLET MOTOR
IN	INLET NOZZLE
IO	INLET OIL
IP	INLET PUMP
IQ	INLET QUANTITY
IR	INLET RATIO
IS	INLET SENSITIVE
IT	INLET TEST
IU	INLET UNIT
IV	INLET VALVE
IW	INLET WEIGHT
IX	INLET EXHAUST
IY	INLET YIELD
JA	JET
JB	JET BURNER
JC	JET CONTROL
JD	JET DRIVE
JE	JET ENGINE
JF	JET FLOW
JG	JET GATE
JH	JET HEAD
JI	JET INLET
JJ	JET JET
JK	JET KNOB
JL	JET LINE
JM	JET MOTOR
JN	JET NOZZLE
JO	JET OIL
JP	JET PUMP
JQ	JET QUANTITY
JR	JET RATIO
JS	JET SENSITIVE
JT	JET TEST
JU	JET UNIT
JV	JET VALVE
JW	JET WEIGHT
JX	JET EXHAUST
JY	JET YIELD
KA	KNOB
KB	KNOB BURNER
KC	KNOB CONTROL
KD	KNOB DRIVE
KE	KNOB ENGINE
KF	KNOB FLOW
KG	KNOB GATE
KH	KNOB HEAD
KI	KNOB INLET
KJ	KNOB JET
KK	KNOB KNOB
KL	KNOB LINE
KM	KNOB MOTOR
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KO	KNOB OIL
KP	KNOB PUMP
KQ	KNOB QUANTITY
KR	KNOB RATIO
KS	KNOB SENSITIVE
KT	KNOB TEST
KU	KNOB UNIT
KV	KNOB VALVE
KW	KNOB WEIGHT
KX	KNOB EXHAUST
KY	KNOB YIELD
LA	LINE
LB	LINE BURNER
LC	LINE CONTROL
LD	LINE DRIVE
LE	LINE ENGINE
LF	LINE FLOW
LG	LINE GATE
LH	LINE HEAD
LI	LINE INLET
LJ	LINE JET
LK	LINE KNOB
LL	LINE LINE
LM	LINE MOTOR
LN	LINE NOZZLE
LO	LINE OIL
LP	LINE PUMP
LQ	LINE QUANTITY
LR	LINE RATIO
LS	LINE SENSITIVE
LT	LINE TEST
LU	LINE UNIT
LV	LINE VALVE
LW	LINE WEIGHT
LX	LINE EXHAUST
LY	LINE YIELD
MA	MOTOR
MB	MOTOR BURNER
MC	MOTOR CONTROL
MD	MOTOR DRIVE
ME	MOTOR ENGINE
MF	MOTOR FLOW
MG	MOTOR GATE
MH	MOTOR HEAD
MI	MOTOR INLET
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MM	MOTOR MOTOR
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MO	MOTOR OIL
MP	MOTOR PUMP
MQ	MOTOR QUANTITY
MR	MOTOR RATIO
MS	MOTOR SENSITIVE
MT	MOTOR TEST
MU	MOTOR UNIT
MV	MOTOR VALVE
MW	MOTOR WEIGHT
MX	MOTOR EXHAUST
MY	MOTOR YIELD
NA	NOZZLE
NB	NOZZLE BURNER
NC	NOZZLE CONTROL
ND	NOZZLE DRIVE
NE	NOZZLE ENGINE
NF	NOZZLE FLOW
NG	NOZZLE GATE
NH	NOZZLE HEAD
NI	NOZZLE INLET
NJ	NOZZLE JET
NK	NOZZLE KNOB
NL	NOZZLE LINE
NM	NOZZLE MOTOR
NN	NOZZLE NOZZLE
NO	NOZZLE OIL
NP	NOZZLE PUMP
NQ	NOZZLE QUANTITY
NR	NOZZLE

FIELD BOOK: PALM BAY BK 4

PAGE(S): 39-42

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DATE: 11/13/2020

DESIGN/DRAWN: LEH

PROJECT TITLE

NSD PALM BAY IV

SHEET TITLE

ALTA/NSPS SURVEY

PROJECT NO.

11491

DRAWING NO.

11491 100 005

SHEET

1 of 2

NATIONAL FLOOD INSURANCE PROGRAM INFORMATION

THIS PROPERTY IS LOCATED IN FLOOD ZONE "X" (UNSHADED), ACCORDING TO THE FIRM
FLOOD INSURANCE RATE MAP, MAP NUMBER 12009C0611G, MAP REVISED MARCH 17, 2014.

ZONING INFORMATION

THIS PROPERTY IS ZONED LIGHT INDUSTRIAL PER INFORMATION DETERMINED FROM THE CITY OF PALM BAY ZONING MAP AVAILABLE ON THE INTERNET AT THE FOLLOWING WEBSITE:
<https://gis.palmabayflorida.org/>



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopment@palmbayflorida.org

REZONING APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 28-37-14-00-250 AND 28-37-14-00-254

TAX ACCOUNT NUMBER 2826106 AND 2826109

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

EXHIBIT "A" - LEGAL DESCRIPTION

PROPERTY ADDRESS 2351 COMMERCE PARK DRIVE, NE PALM BAY, FL 32905

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 7.11 ACRES

ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.) LI - LIGHT INDUSTRIAL

ZONING CLASSIFICATION DESIRED (ex.: IU, LI, etc.) BMU - BAYFRONT MIXED USE

STRUCTURES LOCATED ON THE PROPERTY NONE. VACANT PARCEL

PRESENT USE OF THE PROPERTY:

VACANT PARCEL

INTENDED USE OF THE PROPERTY AND JUSTIFICATION FOR THE CHANGE:

REQUEST TO MODIFY ZONING DESIGNATION FROM LIGHT INDUSTRIAL (LI) TO REFLECT CURRENT ZONING UPGRADES TO BAYFRONT MIXED USE (BMU) AS NOTED ACROSS ROBERT J CONLAN, BLVD.

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☐ *\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ School Board of Brevard County School Impact Analysis Application (if applicable).
- ☐ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☐ **Where the property owner is not the representative for the request**, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative ANA SAUNDERS, P.E. AND MIGUEL REYNALDOS

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

**CITY OF PALM BAY, FLORIDA
REZONING APPLICATION
PAGE 3 OF 3**

Under penalties of perjury, I declare that I have read the foregoing rezoning application and that the facts stated in it are true.

Owner Signature  **Date** 3/11/21

Printed Name ANDREW STEEL NSD PALM BAY IV, LLC

Full Address 2295 SOUTH HIAWASSEE ROAD, SUITE 306, ORLANDO, FL 32835

Telephone 561-635-6663 **Email** ANDREW@NSDPARTNERS.COM

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

Re: Letter of Authorization

As the property owner of the site legally described as:

EXHIBIT "A" - LEGAL DESCRIPTION

I, Owner Name: ANDREW STEEL, NSD PALM BAY IV, LLC

Address: 2295 SOUTH HIAWASSEE ROAD, SUITE 306, ORLANDO, FL 32835

Telephone: 561-635-6663 OR 407-735-9100

Email: ANDREW@NSDPARTNERS.COM

hereby authorize:

Representative: ANA SAUNDERS, P.E. B.S.E. CONSULTANTS, INC.

Address: 312 SOUTH HARBOR CITY BLVD., SUITE 4, MELBOURNE, FL 32901

Telephone: 321-725-3674

Email: ASAUNDERS@BSECONSULT.COM

to represent the request(s) for:

FUTURE LAND USE MAP AMENDMENT AND REZONING APPLICATIONS

(Property Owner Signature)



James Shulterbrondt
Comm. #GG916223
Expires: Sept. 24, 2023
Bonded Thru Aaron Notary

STATE OF

Florida

COUNTY OF

Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10 day of March, 2021 by

Andrew R. Steel

, property owner.

James Shulterbrondt

, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

Re: Letter of Authorization

As the property owner of the site legally described as:

EXHIBIT "A" - LEGAL DESCRIPTION

I, Owner Name: ANDREW STEEL, NSD PALM BAY IV, LLC

Address: 2295 SOUTH HIAWASSEE ROAD, SUITE 306, ORLANDO, FL 32835

Telephone: 561-635-6663 OR 407-735-9100

Email: ANDREW@NSDPARTNERS.COM

hereby authorize:

Representative: MIGUEL REYNALDOS NORTHSHORE DEVELOPMENT, LLC

Address: 2295 SOUTH HIAWASSEE ROAD, SUITE 306, ORLANDO, FL 32835

Telephone: 305-986-0110 OR 407-735-9100

Email: MIGUEL@NSDPARTNERS.COM

to represent the request(s) for:

FUTURE LAND USE MAP AMENDMENT AND REZONING APPLICATIONS

(Property Owner Signature)

STATE OF Florida

COUNTY OF Orange



James Shuterbrondt
Comm. #GG916223
Expires: Sept. 24, 2023
Bonded Thru Aaron Notary

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10 day of March, 2021 by

Andrew R. Steel

, property owner.

James Shuterbrondt

, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

EXHIBIT "A" – LEGAL DESCRIPTION:

DESCRIPTION FROM EXHIBIT "A", OF THAT CERTAIN COMMONWEALTH LAND TITLE INSURANCE COMPANY, AMERICAN LAND TITLE ASSOCIATION COMMITMENT, ISSUING OFFICE FILE NUMBER: 412000126TS, CUSTOMER'S FILE NUMBER: C20000332/NSD PALM BAY IV TW8660763, COMMITMENT DATE: JULY 23, 2020 AT: 5:00 AM:

PART OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2792, PAGE 2180, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST ONE-QUARTER CORNER OF SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST AND RUN 88°38'20"E A DISTANCE OF 48.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF LIPSCOMB STREET; THENCE N00°58'25"E ALONG SAID RIGHT OF WAY DISTANCE OF 691.12 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL DESCRIBED IN SAID OFFICIAL RECORDS BOOK 3001, PAGE 1536, (SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 5478, PAGE 1513); THENCE CONTINUE N00°58'25"E A DISTANCE OF 551.12 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN "OUTFALL DITCH" AS DESCRIBED IN OFFICIAL RECORDS BOOK 7557, PAGE 476, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S88°35'02"E, ALONG THE SOUTH LINE OF SAID "OUTFALL DITCH", A DISTANCE OF 325.20 FEET; THENCE CONTINUE ALONG SAID SOUTH LINE, S88°35'02"E A DISTANCE OF 325.20 FEET TO THE SOUTHEAST CORNER OF SAID "OUTFALL DITCH", (SAID POINT ALSO BEING A POINT OF THE BOUNDARY OF THAT CERTAIN "RETENTION BASIN" AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 7557, PAGE 476; THENCE S00°58'25"W, ALONG SAID BOUNDARY LINE, A DISTANCE OF 140.01 FEET TO THE SOUTHWEST CORNER OF SAID "RETENTION BASIN"; THENCE S89°35'02"E, CONTINUING ALONG SAID BOUNDARY LINE, A DISTANCE OF 208.98 FEET; THENCE S00°58'25"W A DISTANCE OF 446.86 FEET TO A NON-TANGENT INTERSECTION WITH THE CURVED NORTH RIGHT-OF-WAY LINE OF COMMERCE PARK DRIVE; THENCE ALONG THE ARC OF SAID CURVED RIGHT-OF-WAY LINE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 280.00 FEET, A CENTRAL ANGLE OF 02°50'40", A CHORD LENGTH OF 13.90 FEET AND A CHORD BEARING OF S62°03'08"E), A DISTANCE OF 13.90 FEET TO THE END OF SAID CURVE; THENCE S60°37'48"E, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 349.58 FEET TO THE SOUTHWESTERLY CORNER OF THAT CERTAIN "CHANNEL 2" AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 7557, PAGE 476; THENCE S60°37'48"E, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 274.57; THENCE S60°37'48"E, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 573.77 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH AND HAVING A RADIUS OF 220.00 FEET, A CENTRAL ANGLE OF 28°00'32", A CHORD LENGTH OF 106.48 FEET AND A CHORD BEARING OF S74°38'04"E), A DISTANCE OF 107.55 FEET TO A POINT OF COMPOUND CURVATURE; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH AND HAVING A RADIUS OF 199.60 FEET, A CENTRAL ANGLE OF 25°52'00", A CHORD LENGTH OF 89.35 FEET AND A CHORD BEARING OF N78°25'40"E), A DISTANCE OF 90.11 FEET TO A POINT OF REVERSE CURVATURE; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 199.60 FEET, A CENTRAL ANGLE OF 09°28'17", A CHORD LENGTH OF 32.96 FEET AND A CHORD BEARING OF N70°13'48"E), A DISTANCE OF 33.00 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN "CHANNEL 1" AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 7557, PAGE 476 AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE N46°38'20"W ALONG THE EAST LINE OF SAID "CHANNEL 1" A DISTANCE OF 49.83 FEET; THENCE N01°21'40"E, CONTINUING ALONG THE EAST LINE OF SAID "CHANNEL 1", A DISTANCE OF 800.00 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 6753, PAGE 706, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE N88°35'02"E, ALONG THE SOUTH LINE OF SAID PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 6753, PAGE 706, A DISTANCE OF 468.48 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 6753, PAGE 706 AND THE WEST RIGHT-OF-WAY LINE OF NORTHVIEW STREET; THENCE S00°40'28"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 110.72 FEET TO A NON-TANGENT INTERSECTION WITH THE CURVED WESTERLY RIGHT-OF-WAY LINE OF ROBERT J CONLAN BOULEVARD; THENCE ALONG THE ARC OF SAID CURVED RIGHT-OF-WAY LINE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1054.93 FEET, A CENTRAL ANGLE OF 30°55'37", A CHORD LENGTH OF 562.54 FEET AND A CHORD BEARING OF S16°08'16"W), A DISTANCE OF 569.43 FEET TO THE END OF SAID CURVE; THENCE S00°40'28"W, CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 170.14 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID COMMERCE PARK DRIVE; THENCE N88°38'20"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 235.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 199.60 FEET, A CENTRAL ANGLE OF 16°23'43", A CHORD LENGTH OF 56.92 FEET AND A CHORD BEARING OF S83°09'48"W), A DISTANCE OF 57.12 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING IN SECTION 14, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA

ORDINANCE 2021-85

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM LI (LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT) TO BMU (BAYFRONT MIXED USE DISTRICT); WHICH PROPERTY IS LOCATED AT THE NORTHWEST CORNER OF ROBERT J. CONLAN BOULEVARD AND COMMERCE PARK DRIVE, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from LI (Light Industrial and Warehousing District) to BMU (Bayfront Mixed Use District), being legally described as follows:

Tax Parcels 250 and 254, of the Public Records of Brevard County, Florida; Section 14, Township 28S, Range 37E; containing 7.11 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment of Ordinance 2021-84.

Read in title only at Meeting 2021- , held on , 2021; and
read in title only and duly enacted at Meeting 2021- , held on , 2021.

ATTEST:

Rob Medina, MAYOR

Terese M. Jones, CITY CLERK

City of Palm Bay, Florida
Ordinance 2021-85

Reviewed by CAO: _____

Applicant: NSD Palm Bay IV, LLC
Case: CPZ-11-2021

cc: (date) Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2021-88, rezoning property located north of and adjacent to Malabar Road, in the vicinity west of St. Johns Heritage Parkway, from PMU (Parkway Mixed Use District) to CC (Community Commercial District) (9.75 acres) (Case CPZ-18-2021, Willard Palmer), final reading. (Quasi-Judicial Proceeding)

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

Mr. Willard Palmer (Scott M. Glaubitz, P.E., P.L.S. or assignee, BSE Consultants, Inc., Rep.) has submitted a rezoning of the subject parcel from PMU, Parkway Mixed Use District to CC, Community Commercial District. The property is located at the far west end of Malabar Road, directly south of Heritage High School. The land was formerly used for agricultural purposes, and an old cattle shelter is currently on the site.

The applicant intends to convey the property to another party for future commercial development that will serve the needs of both existing and future residents of the area. The western end of Palm Bay currently has no active commercial uses, and this zoning change allows for a needed use. There is, however, approximately 32.8 acres of undeveloped Community Commercial land approximately 0.75 miles east of the subject parcel, on the south side of Malabar Road.

REQUESTING DEPARTMENT:
Growth Management

RECOMMENDATION:
Motion to approve Case CPZ-18-2021.

Planning and Zoning Board Recommendation:
Unanimous approval of the request.

ATTACHMENTS:**Description**

Case CPZ-18-2021 - Staff Report

Case CPZ-18-2021 - Legal-Sketch

Case CPZ-18-2021 - Application

Case CPZ-18-2021 - Board Minutes

Ordinance 2021-88



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

CPZ-18-2021

PLANNING & ZONING BOARD HEARING DATE

November 15, 2021

PROPERTY OWNER & APPLICANT

Willard Palmer

PROPERTY LOCATION/ADDRESS

Tax Parcel 750, Section 32, Township 28, Range 36,
located south of and adjacent to Heritage High School,
Brevard County, Florida

SUMMARY OF REQUEST

The applicant is requesting a rezoning of the subject parcel from PMU, Parkway Mixed Use to CC, Community Commercial.

Existing Zoning

PMU, Parkway Mixed Use

Existing Land Use

PFU, Parkway Flex Use

Site Improvements

Old, Cattle Shelter/Feeder

Site Acreage

9.75 acres

SURROUNDING ZONING & USE OF LAND

North

GU – General Use; Heritage High School

East

GU – General Use; Heritage High School

South

AU – Agricultural Residential (Brevard County); Undeveloped Land

West

GU – General Use; Heritage High School

COMPREHENSIVE PLAN

COMPATIBILITY

Yes, subject to approval of Case No. CP-18-2021

BACKGROUND:

The subject property is located south of and adjacent to Heritage High School, north of and adjacent to Malabar Road NW. Specifically Tax Parcel 750, Section 32, Township 28 south, Range 36 east, of Brevard County, Florida.

The property was formerly used for agricultural purposes and contains an old, cattle shelter. The applicant purchased the parcel in 2007, but now intends to convey the property to another party. The intended use of the property is for future commercial development.

ANALYSIS:

The following analysis is per Chapter 185: Zoning Code, Section 185.201(C), which states that all proposed amendments shall be submitted to the Planning and Zoning Board, which shall study such proposals in accordance with items 1 through 4 of Section 185.201(C).

Item 1 - *The need and justification for the change.*

The applicant has not provided any written justification for the change, other than a desire for future commercial use. The current zoning designation of PMU requires a mix of residential and commercial uses. This western end of Palm Bay currently has no active commercial uses and this change in zoning will allow for a needed use.

Item 2 - *When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and on surrounding properties.*

The rezoning to Community Commercial has the increased potential to provide jobs, goods, and services to residents in this area of Palm Bay. The most immediate effects to occur would be to Heritage High School, as this property lies directly in front of the school. Any effects would be dependent on the specific development and its design.

Item 3 - *When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested.*

Approximately 32.8 acres of undeveloped Community Commercial zoned land are located approximately 0.75 miles east of the subject parcel, on the south side of Malabar Road.

Item 4 - *The relationship of the proposed amendment to the purpose of the city plan for development, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and the Comprehensive Plan (Plan).*

The proposed rezoning will further the purposes of Chapter 185 and the Comprehensive Plan, by attempting to strike a balance in commercial versus residential uses.

STAFF RECOMMENDATION:

Case CPZ-18-2021 is recommended for approval.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



AERIAL LOCATION MAP CASE: CP-18-2021 & CPZ-18-2021

Subject Property

North of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Parkway NW



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP CASE: CP-18-2021 & CPZ-18-2021

Subject Property

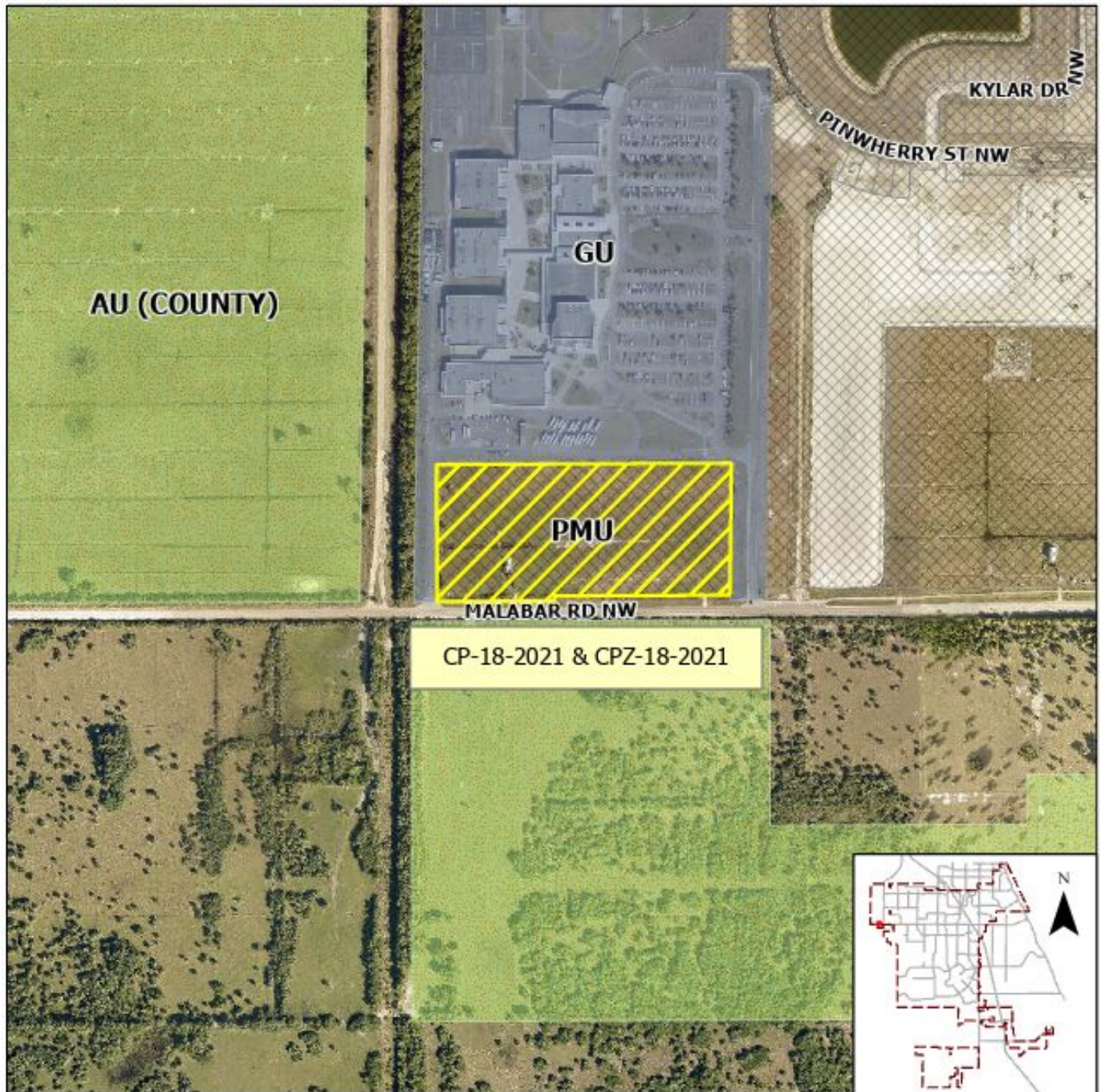
North of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Parkway NW

Future Land Use Classification

PFU – Parkway Flex Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: CP-18-2021 & CPZ-18-2021

Subject Property

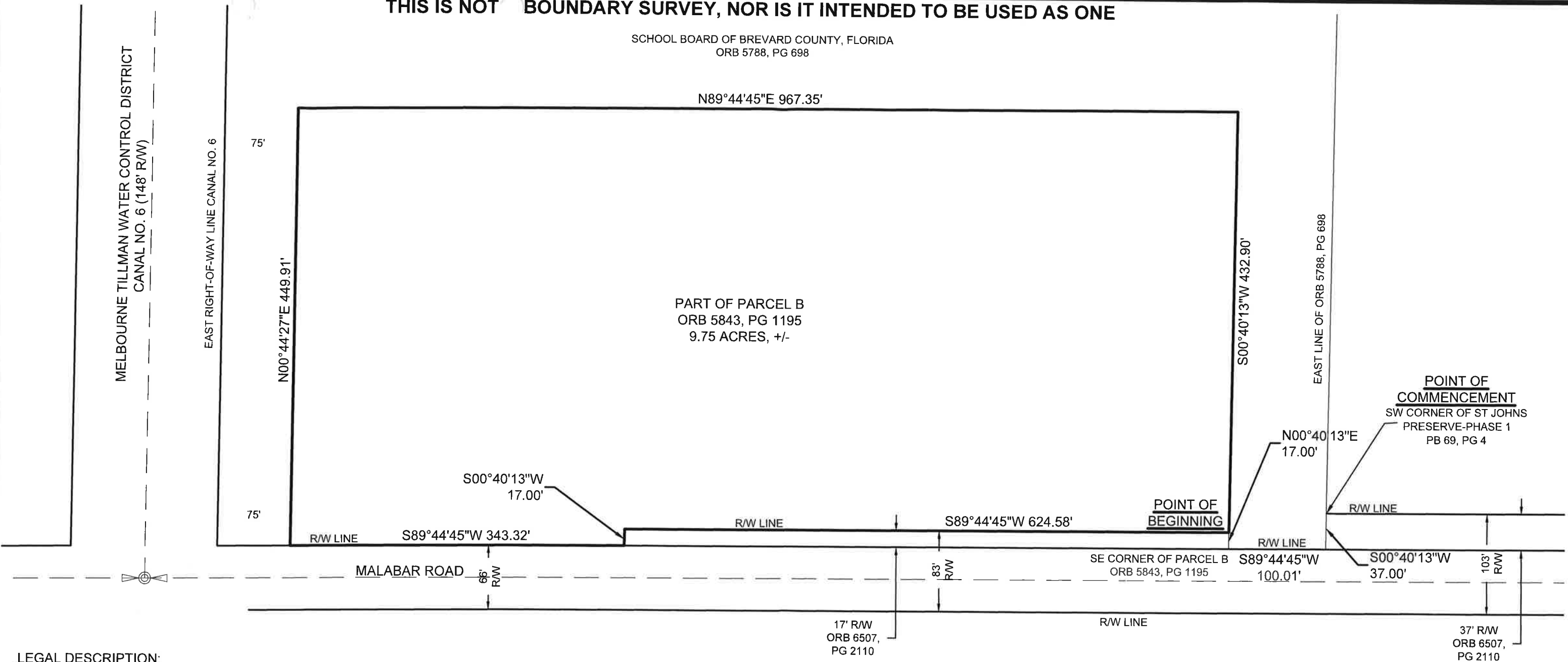
North of and adjacent to Malabar Road NW, in the vicinity west of St. Johns Heritage Parkway NW

Current Zoning Classification

PMU – Parkway Mixed Use District

THIS IS NOT BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA
ORB 5788, PG 698

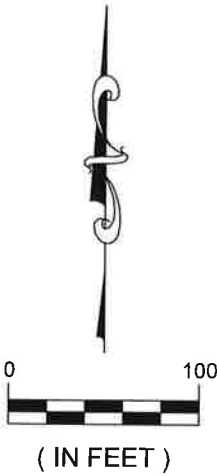


LEGAL DESCRIPTION:

PART OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL B, AS RECORDED IN OFFICIAL RECORDS BOOK 5843, PAGE 1195, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LYING IN SECTION 32, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF ST JOHNS PRESERVE-PHASE 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 69, PAGE 4, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND RUN S00°40'13"W, ALONG THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 5788, PAGE 698, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 37.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MALABAR ROAD, A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY; THENCE S89°44'45"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.01 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL B; THENCE N00°40'13"E, ALONG THE EAST LINE OF SAID PARCEL B AND CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 17.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE S89°44'45"W, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 624.58 FEET; THENCE S00°40'13"W, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 17.00 FEET; THENCE S89°44'45"W, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.32 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B; THENCE N00°44'27"E, PARALLEL TO AND 75.00 FEET EAST OF, (AS MEASURED PERPENDICULARLY), THE EAST RIGHT-OF-WAY LINE OF MELBOURNE-TILLMAN WATER CONTROL DISTRICT CANAL NUMBER 6, A DISTANCE OF 449.91 FEET TO THE NORTHWEST CORNER OF SAID PARCEL B; THENCE N89°44'45"E, PARALLEL TO THE NORTH RIGHT-OF-WAY LINE OF SAID MALABAR ROAD AND ALONG THE NORTH LINE OF SAID PARCEL B, A DISTANCE OF 967.35 FEET TO THE NORTHEAST CORNER OF SAID PARCEL B; THENCE S00°40'13"W, ALONG THE EAST LINE OF SAID PARCEL B, A DISTANCE OF 432.90 FEET TO THE POINT OF BEGINNING. CONTAINING 9.75 ACRES, MORE OR LESS.

MALABAR STORAGE
SKETCH & DESCRIPTION





B.S.E. CONSULTANTS, INC.
CONSULTING - ENGINEERING - LAND SURVEYING
312 SOUTH HARBOR CITY BOULEVARD, SUITE 4 MELBOURNE, FL 32901
PHONE: (321) 725-3874 FAX: (321) 723-1159
CERTIFICATE OF BUSINESS AUTHORIZATION: 4905
CERTIFICATE OF LAND SURVEYING BUSINESS AUTHORIZATION: LB0004905

DATE: 09/08/2021
DESIGN/DRAWN: LEH
DRAWING# 1161901_100_001
PROJECT# 11619.01
SHEET 1 OF 1



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopmentweb@palmbayflorida.org

REZONING APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID(S):

28-36-32-00-750

TAX ACCOUNT NUMBER(S):

2865684

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION: (attach additional sheets if necessary):

PART OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL B, AS RECORDED IN OFFICIAL RECORDS BOOK 5843, PAGE 1195, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LYING IN SECTION 32, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA

PROPERTY ADDRESS:

2865684

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):

9.75 acres

ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.):

PMU

ZONING CLASSIFICATION DESIRED (ex.: IU, LI, etc.):

CC

CITY OF PALM BAY, FLORIDA
REZONING APPLICATION
PAGE 2 OF 3

STRUCTURES LOCATED ON THE PROPERTY:

±30'x25' Cattle Shelter/Feeder

PRESENT USE OF THE PROPERTY:

Grazing

INTENDED USE OF THE PROPERTY AND JUSTIFICATION FOR THE CHANGE:

Commercial

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ *A \$650.00 application fee. Make Check payable to "City of Palm Bay."
- ☒ A Boundary Survey or Sketch with legal descriptions of properties covered by this application.
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline. Staff will provide a sign template.
- ☒ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

Name of Representative Scott M. Glaubitz, P.E., P.L.S./ Ken Ludwa or BSE Representative

**CITY OF PALM BAY, FLORIDA
REZONING APPLICATION
PAGE 3 OF 3**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing rezoning application and that the facts stated in it are true.

Owner Signature

Willard Palmer

Date

9/9/21

Printed Name

Willard Palmer

Full Address

4540 Elena Way Melbourne, FL 32934

Telephone

321-288-7373

Email

thomascurler@yahoo.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

AUTHORIZATION TO ACT AS AGENT

I, **Mr. Willard Palmer**, owner of the property, hereby authorize Scott M. Glaubitz, P.E., P.L.S., President; Hassan Kamal, P.E., Vice President; Ana Saunders, P.E., Project Engineer; or Ken A. Ludwa, P.E., Project Engineer, of B.S.E. Consultants, Inc., to act as agent in all permitting and certification matters for **Malabar Storage Rezoning and Land Use Parcel #: 28-36-32-00-750** in the City of Palm Bay, Brevard County, Florida. This authorization shall include all public hearing, engineering and permitting services for this subdivision/site.

Willard Palmer
Signature

Willard Palmer

STATE OF FLORIDA COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 7th day of OCT., 2021, by
(name of person acknowledging).



Lisa Ann Ketner
(Signature of Notary Public-State of Florida)

LISA ANN KETNER
(Name of Notary Typed, Printed, or Stamped)

Personally Known ☒ OR Produced Identification _____
Type of Identification Produced

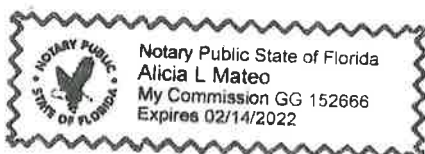
STATE OF FLORIDA, COUNTY OF BREVARD

On this 7th day of OCTOBER, 2021, I attest that the preceding document is a true, exact, complete, and unaltered photocopy made by me of the AUTHORIZATION TO ACT AS AGENT presented to me by the document's custodian, B.S.E. Consultants, Inc. and, to the best of my knowledge, that the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are not available from an official source other than a notary public.

Alicia L. Mateo
(Signature of Notary Public-State of Florida)

(NOTARY SEAL)

ALICIA L. MATEO
(Name of Notary Typed, Printed, or Stamped)



CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
SPECIAL MEETING 2021-13

Held on Monday, November 15, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 6:00 p.m.

Mr. Rainer Warner led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present (Late)
MEMBER:	Rainer Warner	Present
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ANNOUNCEMENTS:

1. Mr. Weinberg addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.
2. Mr. Balter announced the various City Council hearing dates for the cases on the agenda.

Ms. Maragh joined the meeting at 6:04 p.m.

3. Mr. Weinberg announced that New Business Items 9 and 10, Cases CP-18-2021 and **CPZ-18-2021** (Willard Palmer, represented by Scott M. Glaubitz, P.E., P.L.S., or assignee, BSE Consultants, Inc.), would be heard prior to Item 1 under New Business.

OLD/UNFINISHED BUSINESS:

1. **CP-14-2021 - Palm Vista at Everlands Phase II - Greg Pettibon, Lennar Homes, LLC (Scott Glaubitz, P.E., P.L.S. or assignee, BSE Consultants, Inc., Rep.) - A small-scale Comprehensive Plan Future Land Use Map amendment from Recreation and Open Space Use and Single-Family Residential Use to Multiple-Family Residential Use and Single-Family Residential Use. Part of Tax Parcel 1 and Tax Parcel 252, Section 21, Township 28, Range 36, Brevard County, Florida, containing approximately 26.67 acres. In the vicinity east of St. Johns Heritage Parkway NW and north of Emerson Drive NW**

Mr. Balter presented the staff report for Case CP-14-2021. Staff recommended Case CP-14-2021 for approval.

Ms. Ana Saunders, P.E. with BSE Consultants, Inc. (representative for the applicant) stated that the subject proposal was an extension of the Palm Vista Medley development that was recently approved by the board.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Motion to submit Case CP-14-2021 to City Council for approval.

Motion by Mr. Hill, seconded by Ms. Jordan. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case CP-14-2021 would be heard by City Council on November 18, 2021.

Motion by Ms. Jordan, seconded by Mr. Boerema. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case CP-18-2021 would be heard by City Council on December 16, 2021.

10. ****CPZ-18-2021 - Malabar Storage - Willard Palmer (Scott M. Glaubitz, P.E., P.L.S. or assignee, BSE Consultants, Inc., Rep.) - Zoning amendment from a PMU, Parkway Mixed Use District to a CC, Community Commercial District. Tax Parcel 750, Section 32, Township 28, Range 36, Brevard County, Florida, containing approximately 9.75 acres. North of and adjacent to Malabar Road SW, in the vicinity west of St. Johns Heritage Parkway NW**

Mr. Balter presented the staff report for Case CPZ-18-2021. Staff recommended Case CPZ-18-2021 for approval.

Mr. Warner questioned if the property could be resubmitted for a rezoning if the storage facility planned for the site was not built. Mr. Balter stated that a rezoning could be requested if the storage facility was not constructed, but the CC district allowed for a variety of commercial uses, so another rezoning would be unlikely.

Ms. Ana Saunders, P.E. with BSE Consultants, Inc. (representative for the applicant) stated that the applicant desired the CC zoning designation; another rezoning was not anticipated.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Motion to submit Case CPZ-18-2021 to City Council for approval.

Motion by Ms. Jordan, seconded by Mr. Warner. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case CPZ-18-2021 would be heard by City Council on December 16, 2021.

Motion by Mr. Hill, seconded by Ms. Jordan. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case PD-50-2021 would be heard by City Council on December 16, 2021.

9. **CP-18-2021 - Malabar Storage - Willard Palmer (Scott M. Glaubitz, P.E., P.L.S. or assignee, BSE Consultants, Inc., Rep.) - A small-scale Comprehensive Plan Future Land Use Map amendment from Parkway Flex Use to Commercial Use. Tax Parcel 750, Section 32, Township 28, Range 36, Brevard County, Florida, containing approximately 9.75 acres. North of and adjacent to Malabar Road SW, in the vicinity west of St. Johns Heritage Parkway NW**

Case CP-18-2021 was discussed as the first item under New Business.

10. ****CPZ-18-2021 - Malabar Storage - Willard Palmer (Scott M. Glaubitz, P.E., P.L.S. or assignee, BSE Consultants, Inc., Rep.) - Zoning amendment from a PMU, Parkway Mixed Use District to a CC, Community Commercial District. Tax Parcel 750, Section 32, Township 28, Range 36, Brevard County, Florida, containing approximately 9.75 acres. North of and adjacent to Malabar Road SW, in the vicinity west of St. Johns Heritage Parkway NW**

Case CPZ-18-2021 was discussed as the second item under New Business.

OTHER BUSINESS:

There was no other business discussed.

ADJOURNMENT:

The meeting was adjourned at approximately 8:52 p.m.

ORDINANCE 2021-88

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM PMU (PARKWAY MIXED USE DISTRICT) TO CC (COMMUNITY COMMERCIAL DISTRICT); WHICH PROPERTY IS LOCATED NORTH OF AND ADJACENT TO MALABAR ROAD, IN THE VICINITY WEST OF ST. JOHNS HERITAGE PARKWAY, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from PMU (Parkway Mixed Use District) to CC (Community Commercial District), being legally described as follows:

Tax Parcel 750, of the Public Records of Brevard County, Florida; Section 32, Township 28S, Range 36E; containing 9.75 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment of Ordinance 2021-87.

Read in title only at Meeting 2021- , held on , 2021; and
read in title only and duly enacted at Meeting 2021- , held on , 2021.

ATTEST:

Rob Medina, MAYOR

Terese M. Jones, CITY CLERK

City of Palm Bay, Florida
Ordinance 2021-88

Reviewed by CAO: _____

Applicant: Willard Palmer
Case: CPZ-18-2021

cc: (date) Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Charleena Cox, Human Resources Director, Larry Wojciechowski, Finance Director

DATE: 1/6/2022

RE: Ordinance 2021-91, amending the Code of Ordinances, Chapter 55, Police and Firefighters Retirement Pension Plan, by increasing the supplemental benefit amount for police officers separating with vested service or retiring on or after October 1, 2021, final reading.

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

At the November 18, 2021 Regular Council Meeting, City Council approved new Collective Bargaining Agreements with the Fraternal Order of Police (FOP). Included in the negotiated agreements was an adjustment to the retirement supplemental benefit, which was increased from \$25/month to \$35/month for each complete year of credited service.

The purpose of this agenda item is to adopt changes to Section 55.07 (C) of the Palm Bay Code of Ordinances, to reflect this change to the supplemental benefit amount, effective October 1, 2021.

REQUESTING DEPARTMENT:

FISCAL IMPACT:

No additional fiscal impact is requested, beyond what was previously presented at the November 18, 2021 Regular Council meeting.

RECOMMENDATION:

Motion to approve amendment to Chapter 55, Code of Ordinances, Police and Firefighter Retirement Pension Plan, to reflect negotiated changes to supplemental benefit.

ATTACHMENTS:

Description

Ordinance 2021-91

ORDINANCE 2021-91

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE V, LEGISLATIVE, CHAPTER 55, POLICE AND FIREFIGHTERS RETIREMENT PENSION PLAN, BY INCREASING THE SUPPLEMENTAL BENEFIT AMOUNT FOR POLICE OFFICERS SEPARATING WITH VESTED SERVICE OR RETIRING ON OR AFTER OCTOBER 1, 2021; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay Police Officers' and Firefighters' Retirement System ("Pension Plan") is governed by Chapters 175 and 185, Florida Statutes, and

WHEREAS, the City of Palm Bay has a Police Officers' and Firefighters' Retirement System for the benefit of City police officers and firefighters, and

WHEREAS, the City and the Fraternal Order of Police, Florida State Lodge have negotiated an increase to the supplemental benefit, and

WHEREAS, the Palm Bay City Council has determined that the passage of this ordinance is in the best interest of the citizens of the City of Palm Bay.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 55, Police and Firefighters Retirement Pension Plan, Section 55.07, Retirement Dates and Benefits, is hereby amended and shall henceforth read as follows:

"SECTION 55.07 RETIREMENT DATES AND BENEFITS.

* * *

(C) Supplemental Benefit for Police Officer Members. Effective October 1, 2006, police officer members who either terminate while vested or reach normal retirement or early retirement shall receive a supplemental benefit of twenty-five

dollars (\$25.00) per month for each complete year of credited service. This benefit shall only be paid for the life of the member, and will not be paid to disabled members. The benefit shall commence upon receipt of a retirement benefit and separation from the city and shall cease when the member attains the age of sixty-five (65). >>Effective October 1, 2021, police officer members who thereafter either terminate while vested or reach normal retirement or early retirement shall receive a supplemental benefit of thirty-five dollars (\$35.00) per month for each complete year of credited service. This benefit shall only be paid for the life of the member and will not be paid to disabled members. The benefit shall commence upon receipt of a retirement benefit and separation from the city and shall cease when the member attains eligibility for Medicare/Medicaid in accordance with federal standards.<<

* * *

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021-XX, held on _____, 2021; and read in title only and duly enacted at Meeting 2021-XX, held on _____, 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nelson Moya, Chief of Police

DATE: 1/6/2022

RE: Ordinance 2021-92, amending the Code of Ordinances, Chapter 117, Alarm Systems, by repealing provisions which provide for civil penalties for false alarms, final reading.

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

The Palm Bay Police Department (hereinafter "police department") seeks to modify the Palm Bay City Ordinance entitled "Chapter 117: Alarm Systems" by repealing portions that provide for civil penalties for false alarms.

The Ordinance permits the collection of civil fines by the police department for excessive false alarms. Unfortunately, the only enforcement mechanism for the collection of these civil penalties is the threat of discontinuing police service to the address causing the excessive false alarms. Additionally, the civil penalties are to be paid by the citizen directly to the police department, which the police departments finds to be an unsustainable and unwelcome arrangement.

In the 2020 fiscal year, \$68,065 in alarm fines were received from this ordinance. There are three individuals in the Finance Department who administer the program, the administration of which costs \$44,891.71. The net income of the program for fiscal year 2020 therefore was only approximately \$23,000. Furthermore, there are \$87,910.54 worth of delinquent fines that cannot be collected as there is no collection mechanism aside from suspending police services to those locations, a step the police department does not want to take.

Proposed repeals:

§117.01 Definitions:

Cancellation: The process where response is terminated when the alarm company (designated by the Alarm User) notifies the Police Department that there is not an existing situation at the alarm site requiring police response after an alarm dispatch request. ~~If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil penalty, and no penalty will be assessed.~~

Runaway Alarm. An alarm system that produces repeated alarm signals that do not appear to be caused by separate human action. The Police Department may in its discretion discontinue police responses to alarm

signals from what appears to be a runway alarm. ~~The Alarm Administrator may consider all false alarm dispatches within a twenty-four (24) hour period as one (1) false alarm and invoice the Alarm User accordingly.~~

- §117.05 Alarm Fees and Fines. (Entire Section to be repealed)
- §117.07 Enforcement of Provisions. (Entire Section to be repealed)
- §117.08 Alarm User Awareness Class. (Entire Section to be repealed)
- §117.09 Appeals. (Entire Section to be repealed)

REQUESTING DEPARTMENT:
Police Department, City Attorney's Office

FISCAL IMPACT:
The net loss of approximately \$23,000 per year, the reassignment of duties of three program administrators in the Finance Department.

RECOMMENDATION:
Motion to approve Ordinance 2021-XXXX.

ATTACHMENTS:
Description
Ordinance 2021-92

ORDINANCE 2021-92

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XI, BUSINESS REGULATIONS, CHAPTER 117, ALARM SYSTEMS, BY REPEALING PROVISIONS WHICH PROVIDE FOR CIVIL PENALTIES FOR FALSE ALARMS; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XI, Business Regulations, Chapter 117, Alarm Systems, is hereby amended and shall henceforth read as follows:

“CHAPTER 117: ALARM SYSTEMS

~~§ 117.01 DEFINITIONS.~~

* * *

CANCELLATION. The process where response is terminated when the alarm company (designated by the Alarm User) notifies the Police Department that there is not an existing situation at the alarm site requiring police response after an alarm dispatch request. ~~If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil penalty, and no penalty will be assessed.~~

* * *

RUNAWAY ALARM. An alarm system that produces repeated alarm signals that do not appear to be caused by separate human action. The Police Department may in its discretion discontinue police responses to alarm signals from what appears to be a runaway alarm. ~~The Alarm Administrator may consider all false alarm dispatches within a twenty four (24) hour period as one (1) false alarm and invoice the Alarm User accordingly.~~

* * *

~~§ 117.05 ALARM FEES AND FINES.~~

~~The Police Department shall charge and collect fees and fines based upon a schedule established by resolution.~~

~~* * *~~

~~§ 117.07 ENFORCEMENT OF PROVISIONS.~~

~~(A) Excessive false alarms or failure to register alarm or failure to renew registration annually. It is hereby found and determined that three (3) or more false alarms within a permit year is excessive, constitutes a public nuisance, and shall be unlawful. It is also unlawful for an Alarm User to fail to register an alarm system or renew registration annually. Civil penalties, established through a resolution, shall be assessed. An Alarm User, in lieu of paying the fine for failure to register an alarm system, may pay instead the initial registration fee if he/she registers the system within thirty (30) days of the invoice.~~

~~(B) Discontinuance of Law Enforcement Response. The failure of an Alarm User to make payment of any fees or civil penalty(ies) assessed under this Ordinance within thirty (30) days from the date of the invoice shall result in suspension of law enforcement response to alarm signals that may occur at the premises described in the Alarm User's permit until payment is received. In addition, failure to register and obtain or renew a permit may result in no law enforcement response to an unregistered alarm site.~~

~~(C) A written notice of suspension of law enforcement response shall be mailed via U.S. mail to the Alarm User, suspending service effective five (5) days after payment was due.~~

~~(D) Civil Non-criminal violation. A violation of any of the provisions of this Ordinance shall be a civil violation and shall not constitute a misdemeanor.~~

~~(E) Police response will be reinstated if the Alarm User:~~

~~(1) Pays or otherwise resolves to the satisfaction of the Alarm Administrator all fees and fines, and;~~

~~(2) Reinstatement of police response will be effective immediately upon Alarm Administrator's receipt of payment and certification.~~

~~(3) The alarm company shall be assessed a fine, pursuant to the fee schedule, if the officer responding to the false alarm determines that an on-site employee of the alarm company directly caused a false alarm. In this situation, the false alarm will not be counted against the Alarm User.~~

~~§ 117.08 ALARM USER AWARENESS CLASS.~~

~~A class shall be offered to Alarm Users that will inform them of the problems caused by false alarm dispatches and teach them how to operate their systems without generating false alarms. There shall be no charge to attend this class. The Alarm Administrator shall waive one (1) false alarm dispatch fee for Alarm Users who successfully complete the class up to One Hundred Dollars (\$100.00). There shall be only one (1) waiver per alarm permit in a twenty-four (24) month period.~~

~~§ 117.09 APPEALS.~~

~~(A) *Appeals process.* Assessments of civil penalty(ies) and other enforcement decisions made under this Ordinance may be appealed by filing a written notice of appeal with the Alarm Administrator within ten (10) days after the date of notification of the assessment of civil penalty(ies) or other enforcement decision. The failure to give notice of appeal within this time period shall constitute a waiver of the right to contest the assessment of penalty(ies) or other enforcement decision.~~

~~(B) The Alarm Administrator shall review the evidence, make a decision to resolve the issue on appeal, and provide the Alarm User with a written decision within ten (10) days after receiving the appeal.~~

~~(C) The Alarm User may appeal that decision to the Chief of Police, or his designee, by filing a written request for review setting forth the reasons for appeal within ten (10) days of receiving notice of the Alarm Administrator's decision. The Chief of Police, or his designee, shall review the facts and circumstances and shall provide the Alarm User with a written decision. The decision of the Chief of Police, or his designee, is final as to available administrative remedies of the City.~~

~~(D) *Appeal standard.* The Chief of Police, or his designee, shall review an appeal from the assessment of civil penalty(ies) or other enforcement decisions using a preponderance of the evidence standard and notwithstanding a determination that the preponderance of the evidence supports the assessment of civil penalty(ies) or other enforcement decision, the Chief of Police, or his designee, shall have the discretion to dismiss or reduce civil penalty(ies), or reverse any other enforcement decision where warranted.~~

* * *

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021-XX, held on _____, 2021; and read in title only and duly enacted at Meeting 2021-XX, held on _____, 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Request by Michael and Jeanne Cullen for a variance to allow a proposed swimming pool and deck to encroach seven (7) feet into the 10-foot rear accessory structure setback in PUD (Planned Unit Development) zoning, as established by Section 185.118(A)(4), Palm Bay Code of Ordinances (0.17 acres) (V-51-2021). (Quasi-Judicial Proceeding)

Mr. Michael Cullen and Ms. Jeanne Cullen have submitted for a variance to allow a proposed swimming pool and deck to encroach 7 feet into the 10-foot rear accessory structure setback, as established by Section 185.118(A) (4) of the Palm Bay Code of Ordinances. The .17-acre property contains one lot with a home containing 2,204 square feet.

The applicant desires a "safe zone" of approximately 9 to 10 feet between their home and the proposed pool to accommodate their visually impaired grandchild and a wheelchair-bound relative. The applicant does not believe the minimum five-foot separation is a sufficient distance. This may be a special condition or circumstance peculiar to the land, structure, or buildings involved. Building within the required accessory structure allowance would require the applicant to reduce the pool and decking by 7 feet. The excess does not appear to create any health or safety hazards to adjacent properties.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Request for City Council to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Planning and Zoning Board Recommendation:

Unanimous approval of the request.

ATTACHMENTS:**Description**

Case V-51-2021 - Staff Report

Case V-51-2021 - Surveys

Case V-51-2021 - Application

Case V-51-2021 - HOA Approval

Case V-51-2021 - Board Minutes



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

V-51-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

PROPERTY OWNER & APPLICANT

Michael and Jeanne Cullen

PROPERTY LOCATION/ADDRESS

Lot 4, Monterey Cove at Bayside Lakes, Section 19,
Township 29, Range 37, Brevard County, Florida,
specifically at 331 Gardendale Circle SE

SUMMARY OF REQUEST

A variance to allow a proposed swimming pool and deck to encroach 7' into the 10' rear accessory structure setback, as established by Section 185.118(A)(4) of the Palm Bay Code of Ordinances.

Existing Zoning

PUD, Planned Unit Development

Existing Land Use

Single-Family Residential Use

Site Improvements

Single-Family Home

Site Acreage

0.17 acres

SURROUNDING ZONING & USE OF LAND

North

PUD, Planned Unit Development, Bayside Lakes Clubhouse

East

PUD, Planned Unit Development, Single-Family Home

South

PUD, Planned Unit Development, Single-Family Home

West

PUD, Planned Unit Development, Single-Family Home

BACKGROUND:

The property consists of one standard lot in the Monterey Cove at Bayside Lakes Subdivision. The home was constructed in 2004, and the property has been sold four times. The applicant bought the property in June of 2020.

ANALYSIS:

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. An application must demonstrate that items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is as follows:

Item 1 - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district, or situation."*

The applicant states "that they have asked for a 'safe zone' from the home to the proposed pool of approximately 9' to 10' due to the fact that they have a visually impaired grandchild as well as a relative who is wheelchair-bound and feel that the minimum 5' from the house is not far enough away from the house". These may be special conditions or circumstances peculiar to the land, structure, or buildings involved.

Item 2 - *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

The special conditions and circumstances identified above, and the need for a variance are not a result of the actions of the applicant.

Item 3 - *"Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code, and would work an unnecessary and undue hardship on the applicant."*

Literal interpretation and enforcement of the Land Development Code would require the applicant to build within the applicable accessory structure requirement. Building within the required accessory structure allowance would require the applicant to reduce the pool and decking by 7'.

Item 4 - *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure."*

A maximum of 7' of relief from the 10' rear accessory structure setback for the proposed pool and deck would be needed to meet the applicant's request.

Item 5 - *"Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district or situation."*

Granting of the variance would confer upon the applicant a special privilege for the proposed pool and deck, as the same development standards apply to other properties in this community. This excess, however, does not appear to create any health or safety hazards to adjacent properties.

Item 6 - *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

Staff has not identified any detrimental effect on public welfare.

Item 7 - *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to the variance request.

STAFF RECOMMENDATION:

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief, is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances and make recommendations to City Council for a final review. Under 59.05(A)(14) of the City of Palm Bay Code of Ordinances, "The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for record."

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



SITE LOCATION MAP CASE: V-51-2021

Subject Property

North of and adjacent to Gardendale Circle SE, in the vicinity east of Bramblewood Drive SE, specifically at 331 Gardendale Circle SE

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.

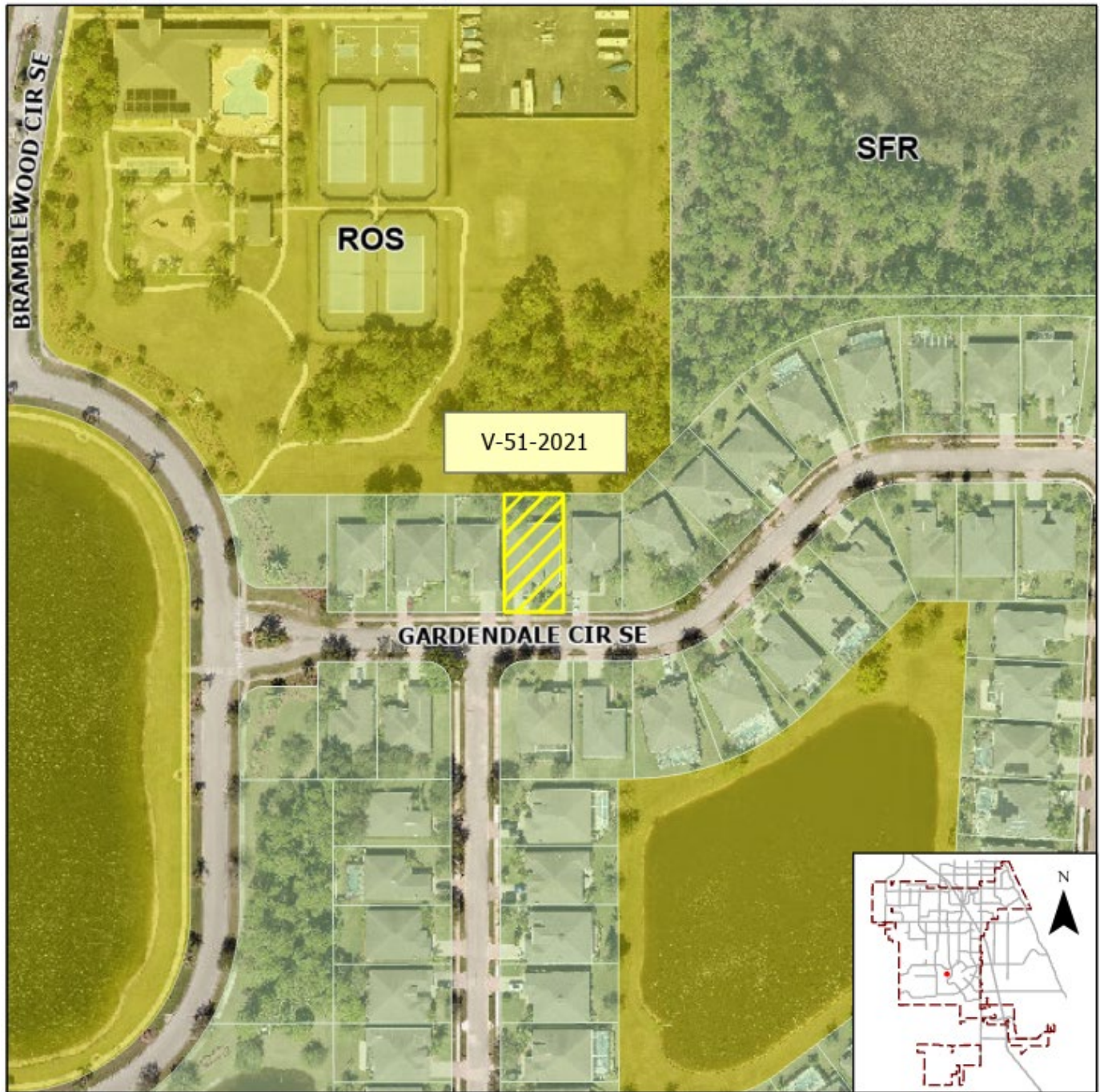


AERIAL LOCATION MAP CASE: V-51-2021

Subject Property

North of and adjacent to Gardendale Circle SE, in the vicinity east of Bramblewood Drive SE, specifically at 331 Gardendale Circle SE

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE: V-51-2021

Subject Property

North of and adjacent to Gardendale Circle SE, in the vicinity east of Bramblewood Drive SE, specifically at 331 Gardendale Circle SE

Future Land Use Classification

SFR – Single Family Residential Use

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: V-51-2021

Subject Property

North of and adjacent to Gardendale Circle SE, in the vicinity east of Bramblewood Drive SE, specifically at 331 Gardendale Circle SE

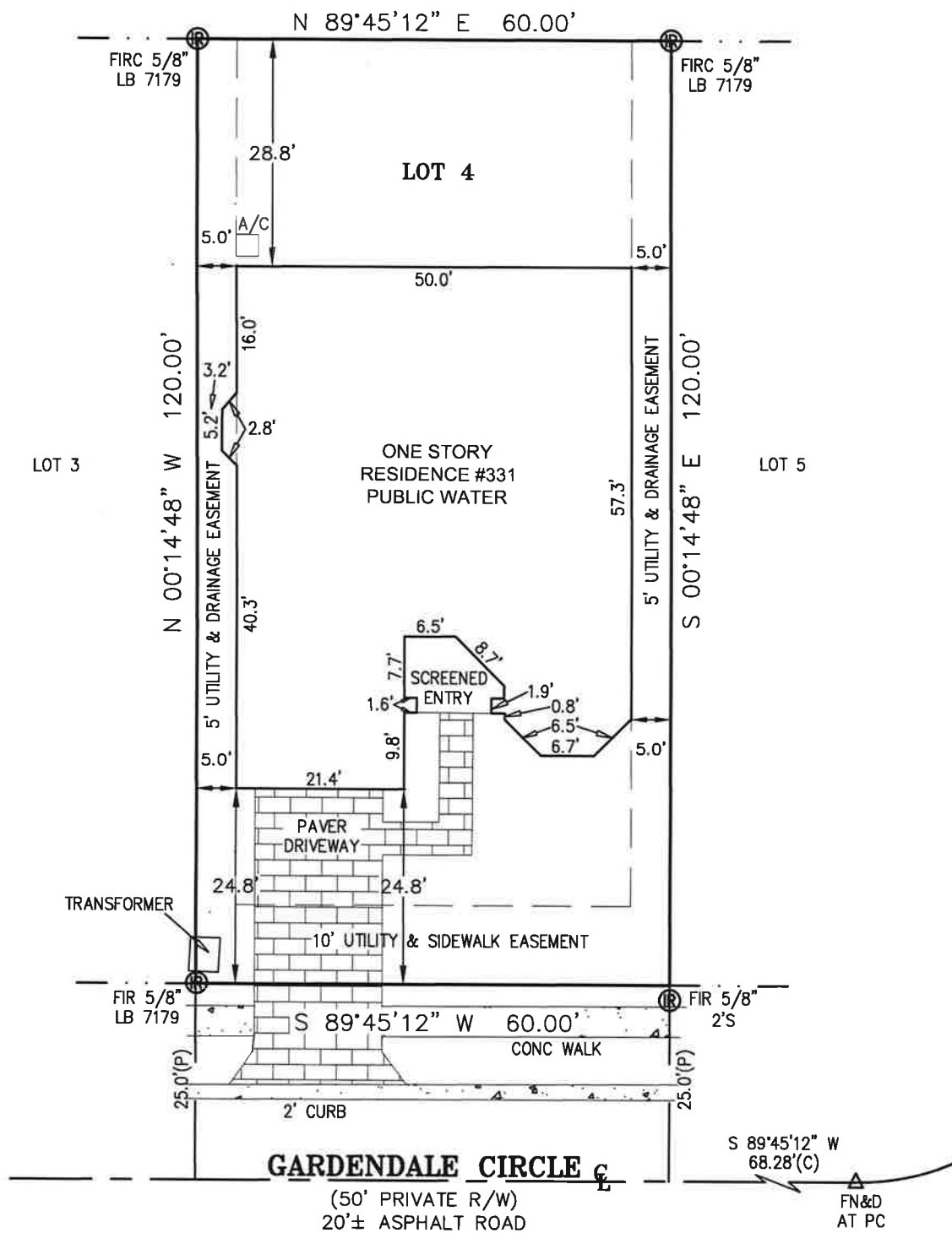
Current Zoning Classification

PUD – Planned Unit Development

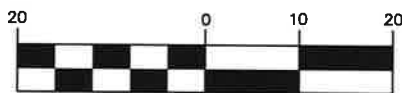
MAP OF SURVEY
BOUNDARY SURVEY
OF

LOT 4, MONTEREY COVE AT BAYSIDE LAKES, according to the plat thereof as recorded in Plat Book 49,
Page(s) 80-81, of the Public Records of Brevard County, Florida. (Contains 0.17 acres)

TRACT "R-1"



GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

CERTIFIED TO:

MICHAEL CULLEN
JEANNE CULLEN

GSS SURVEYING & MAPPING, LLC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 8006

Date: 2021.06.14
15:55:24 -04'00'



PROFESSIONAL SURVEYOR AND MAPPER IN RESPONSIBLE CHARGE

TERRY H. DRUM PROFESSIONAL SURVEYOR AND MAPPER NO. 5597
OR
HENRY A. KILBURN, PROFESSIONAL SURVEYOR AND MAPPER NO. 6661

NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND RAISED SEAL OR DIGITAL SIGNATURE
AND DIGITAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SURVEYORS NOTES:

- LEGAL DESCRIPTION PROVIDED BY CLIENT. ADJOINERS SHOWN HAVE NOT BEEN SURVEYED.
- NO UNDERGROUND FOUNDATIONS HAVE BEEN LOCATED.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND/OR EASEMENTS OF RECORD.
- SEPTIC TANKS AND WELLS IF SHOWN ARE APPROXIMATE LOCATIONS AND SHOULD BE FIELD VERIFIED BY A LICENSED CONTRACTOR FOR CORRECT POSITION AND SEPARATION. UNDERGROUND UTILITIES OR FOOTERS HAVE NOT BEEN LOCATED.
- THE NORTHERLY R/W LINE OF GARDENDALE CIRCLE IS ASSUMED TO BEAR S 89°45'12" W AND ALL OTHER BEARINGS ARE RELATIVE THERETO.
- ALL RIGHTS-OF-WAY SHOWN HEREON ARE OPEN TO TRAVEL UNLESS OTHERWISE NOTED.
- ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP NUMBER 12009C0660G, HAVING AN EFFECTIVE DATE OF MARCH 17, 2014, THIS PROPERTY APPEARS TO LIE WITHIN ZONE X, OUTSIDE SPECIAL FLOOD HAZARD AREA.
- ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES AND ARE REFERENCED TO U.S. SURVEY FEET.
- THE BOUNDARY DETERMINATION AND DELINEATION SHOWN ON THIS MAP OF SURVEY WAS BASED UPON THE PROFESSIONAL OPINION OF THE REGISTERED SURVEYOR PURSUANT TO NORMAL PRINCIPALS AND PRACTICES OF LAND SURVEYING AND IS NOT INTENDED TO IMPLY OR DETERMINE OWNERSHIP. THIS SURVEY DOES NOT INTEND TO DELINEATE LOCAL AREAS OF CONCERN OR ANY OTHER JURISDICTIONAL DETERMINATION.
- THIS SURVEY HAS BEEN PREPARED FOR THE EXCLUSIVE BENEFIT AND USE OF THE PERSONS AND/OR ENTITIES NAMED HEREON FOR THE PURPOSES IDENTIFIED HEREON ONLY. UNLESS OTHERWISE STATED, CERTIFICATION OF THIS SURVEY MAP APPLIES ONLY TO THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J17 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. THE CERTIFICATION IN NO WAY CONSTITUTES NEITHER GUARANTY NOR WARRANTY TO ANY OTHER INFORMATION NOT SHOWN HEREON. ADDITIONS, DELETIONS OR REVISIONS TO THIS DRAWING BY OTHERS ARE NOT PERMITTED AND THIS SURVEY MAY NOT BE TRANSFERRED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF THE SIGNING SURVEYOR. THIS SURVEY IS NOT VALID FOR ANY OTHER PURPOSE OTHER THAN INTENDED BY THE SIGNING SURVEYOR.
- NONE OF THE DIMENSIONS TO STRUCTURES SHOWN SHOULD BE USED FOR CONSTRUCTION OF FENCES. ONLY THE PHYSICAL PROPERTY CORNERS SHOWN ON THIS MAP SHOULD BE USED.

ADDRESS: 331 GARDENDALE CIRCLE SE, PALM BAY, FL 32909

LEGEND

EL = ELEVATION BM = SITE BENCHMARK P.O.C. = POINT OF COMMENCEMENT P.O.B. = POINT OF BEGINNING CB = CHORD BEARING / CH = CHORD PCP = PERMANENT CONTROL POINT PC = POINT OF CURVATURE PT = POINT OF TANGENCY R/W = RIGHT OF WAY FIR = FOUND IRON ROD "NO IDENTIFICATION" FIRC = FOUND IRON ROD WITH CAP	FIP = FOUND IRON PIPE "NO IDENTIFICATION" SIRC = SET 1/2" IRON ROD WITH CAP "LB 8006" CONC = CONCRETE FN&D = FOUND NAIL AND DISK SN&D = SET NAIL AND DISK FF EL = FINISHED FLOOR ELEVATION S/T = SEPTIC TANK SF = SQUARE FOOT (P) = PLAT (D) = DEED (M) = MEASURE C/L = CENTERLINE EOP = EDGE OF PAVEMENT CMP = CORRUGATED METAL PIPE	WM = WATER METER FH = FIRE HYDRANT WV = WATER VALVE EW = EXISTING WELL SM = SANITARY MANHOLE IR = IRON ROD IP = IRON PIPE	CP = CABLE PEDESTAL WUP = WOOD UTILITY POLE GA = GUY ANCHOR ET = ELECTRIC TRANSFORMER CB = CATCH BASIN LP = LIGHT POLE	C = CALCULATED FND = FOUND C# = CURVE NUMBER & = AND AC = AIR CONDITIONER ID = IDENTIFICATION CM = CONCRETE MONUMENT PI = POINT OF INTERSECTION	CLF = CHAIN LINK FENCE WF = WOOD FENCE TB = TOP OF BANK TS = TOE OF SLOPE OW = OVERHEAD WIRES BSL = BUILDING SETBACK LINE
---	---	---	---	--	--

UPDATES and/or REVISIONS	BY	DATE	JOB # 21-0670
			DRAWN BY: EAD
			CHECKED BY: HAK
			FIELD BOOK: FILE
			PAGE:
			FIELD DATE: 06-10-2020

GSS Surveying and Mapping, LLC
700 22nd Place
Suite D-2
Vero Beach, FL 32960
772-696-5300



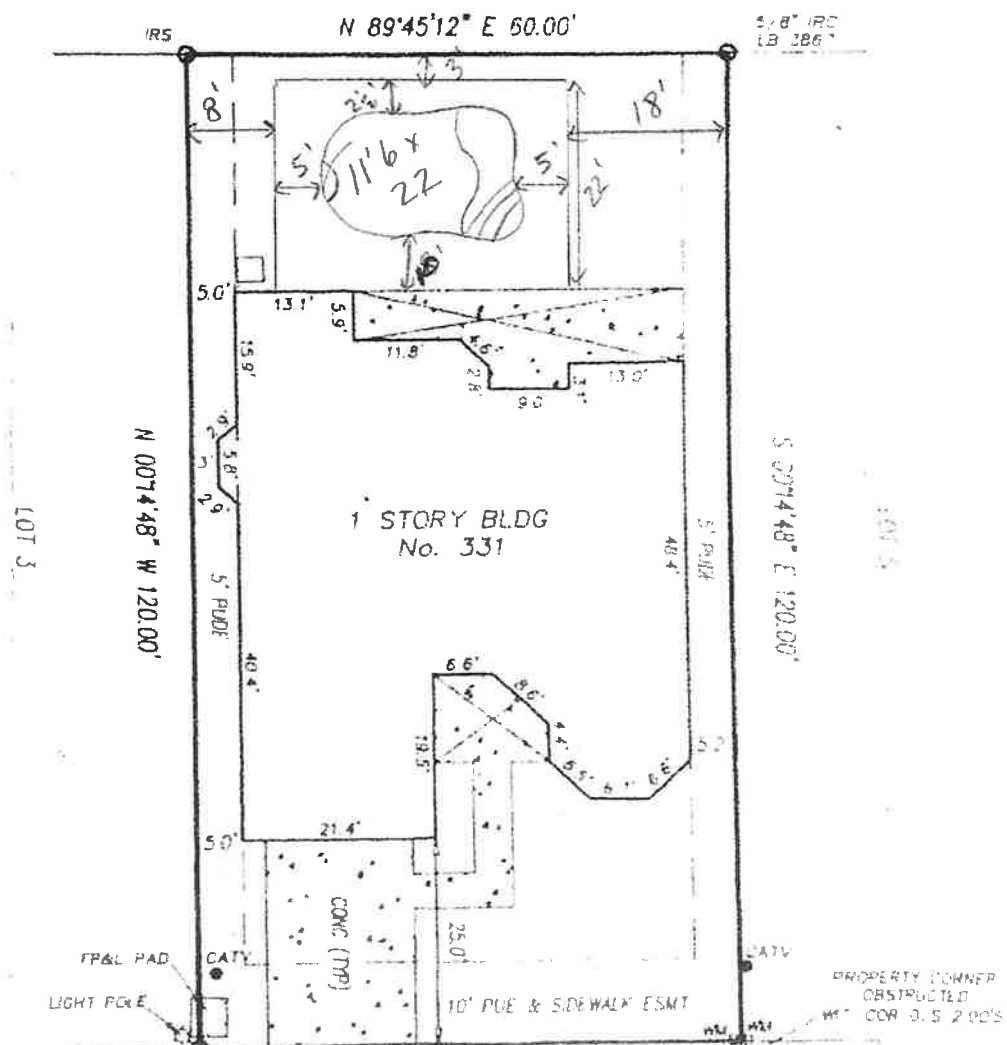
GSS Surveying and Mapping, LLC
4620 Lipscomb St NE
Suite 2
Palm Bay, FL 32905
321-914-3978

MAP OF BOUNDARY SURVEY

TRACT "R-1"

→ Pleasant Cove
11'6" x 22'
3'6" to 5'6"

→ Sapphire Blue G2





LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopment@palmbayflorida.org

VARIANCE APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 29-37-19-76-* - 4

TAX ACCOUNT NUMBER 2962128

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

Monterey Cove at Bayside Lakes Lot 4

STREET ADDRESS OF PROPERTY COVERED BY APPLICATION:

331 GARDENDALE CIR. S.E. PALM BAY, FL 32909

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): .17

EXISTING ZONING CLASSIFICATION OF PROPERTY (ex.: RS-2, CC, etc.) PUD

ARE THERE ANY STRUCTURES ON THE PROPERTY NOW? ☒ YES ☐ NO

HAS A VARIANCE APPLICATION PREVIOUSLY BEEN FILED FOR THIS PROPERTY?
☐ YES ☒ NO

IF SO, STATE THE NATURE OF THE PREVIOUS APPLICATION, WHETHER THE REQUEST WAS APPROVED OR DENIED, AND DATE OF ACTION:

W/A

DESCRIBE THE EXTENT OF THE VARIANCE REQUESTED AND THE INTENDED USE OF THE PROPERTY IF THE VARIANCE IS GRANTED (SPECIFY NUMBER OF INCHES/FEET ENCROACHING INTO SPECIFIC REQUIRED YARD SETBACK OR HEIGHT RESTRICTIONS):

to allow a ~~pool deck~~ swimming pool and deck encroach 7' into the 10' rear accessory setback

CITE THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE AND ITS REQUIREMENT FROM WHICH VARIANCE IS REQUESTED (ex.: 185.034(f)(7)):

185.118 (A)(4)

GIVE WRITTEN EXPLANATION(S) DEMONSTRATING HOW THE VARIANCE MEETS THE FOLLOWING CONDITIONS PER [SECTION 169.009](#):

- (a) That special conditions and circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same land use category, zoning district, or situation.
- (b) That special conditions and circumstances referred to above do not result from the actions of the applicant.
- (c) That literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district, or situation under the terms of the development code, and would work unnecessary and undue hardship on the applicant.
- (d) That if granted, the variance is the minimum variance necessary to make possible the reasonable use of the land, building or structure.
- (e) That granting the variance requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same land use category, zoning district, or situation.
- (f) That granting the requested variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.

see attached

EVIDENCE MUST BE PROVIDED TO CONSIDER VARIANCES BASED ON THE FOLLOWING CLAIMS:

- ☐ **BERT J. HARRIS PRIVATE PROPERTY RIGHTS PROTECTION ACT**, Chapter 95-181, Laws of Florida. Provide a copy of one of the following:
- ☐ Special master appointed in accordance with the act.
 - ☐ Court order as described in the act.
- ☐ **AMERICANS WITH DISABILITIES ACT**. Cite the section of the act from which the variance request will provide relief: _____

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ *\$350.00 Application Fee. Make Check payable to "City of Palm Bay."
- * ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☒ A site plan drawn to scale which shows all property and yard dimensions, its structures (if any) and the variance desired, including abutting highway or road boundaries. The site plan shall also be provided on Memory Drive.
- ☒ Site plan data may be shown on a copy of the survey and must also be provided on Memory Drive.
- * ☒ A survey prepared by a registered surveyor showing all property lines and structures. The survey shall also be provided on Memory Drive.
- ☒ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☐ Where the property owner is not the representative for the request, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative _____

**CITY OF PALM BAY, FLORIDA
VARIANCE APPLICATION
PAGE 4 OF 4**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Variance application and that the facts stated in it are true.

Owner Signature M. J. Cullen. Date OCT. 28. 2021

Printed Name MICHAEL J. CULLEN

Full Address 331 GARDENDALE CIR. S.E. PALM BAY, FL 32909

Telephone 404) 973-4904 Email MJFCULLEN@YAHOO.COM

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

**CITY OF PALM BAY, FLORIDA
VARIANCE APPLICATION
PAGE 4 OF 4**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Variance application and that the facts stated in it are true.

Owner Signature *Jeanne Fisher Cullen* Date *Oct 3, 2021*

Printed Name *JEANNE FISHER CULLEN*

Full Address *331 GARDENDALE CIRCLE S.E. 32909*

Telephone *678-663-9595* Email *jeannefisherCullen@YAHOO.COM*

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

October 27, 2021

Re: Request for Variance
Pool Installation
331 Gardendale Circle SE
Palm Bay, FL 32909

Michael and Jeanne Cullen

Please consider our request for a variance for the installation of a pool due to the following circumstances:

We have asked for a 'safe zone' from our home to the pool of approximately 9'-10' due to the fact that we have a visually impaired grandchild as well as a relative who is wheelchair bound, both of whom frequently visit us. We feel that five feet is not far enough away from our residence. Safety is the only concern for which we are applying for the variance. Under the circumstances, we sincerely request that our variance is approved.

Thank you for your attention to this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Cullen", written in a cursive style.

Michael J. Cullen
(404) 973.4904

Reference # _____ Date Received _____

Monterey Cove at Bayside Lakes HOA, Inc.

c/o Fairway Management, 1331 Bedford Drive, #103, Melbourne, Florida 32940

Application for Architectural Review

Property Owner: MICHAEL & JEANNE CULLEN

Address and Lot #: 331 GARDENDALE CIR

Phone #: 678-663-9595

Email Address: JEANNEFISHERCULLEN@YAHOO.COM

As owner of the above-described property, I/We submit the following for consideration and approval of the Architectural Review Committee. It is my/our desire to add or change the following:

____ Exterior Paint Colors (**Requires color sample for house , garage door and front door**; trim must be white.)

____ Landscaping Plans / Changes to Existing Footprint (Include plot plan, labeled diagrams, photographs, etc.)

____ Screen Room or Addition (Attach copy of plot plan with improvement sketch; must show colors and materials.)

☒ Fence Plan and Detail (Include diagram and detailed descriptions.)

☒ Pool Plan and Detail (Note the setback, type, with pool location sketch and pool contract indicating colors and safety barrier. Attach detailed copy of plot plan including all measurements.)

☒ Tree removal and/or replanting (include detailed diagram of property, indicating the location and type of trees to be removed, ensure stumps are removed, identify whether the tree removal area will be sodded with grass or other plants/flowers will be replanted. Note: Any tree work must be completed within 90 days of the approval date).

____ Roof replacement; Monterey Cove approved shingle color is Weathered Wood

____ Other (Include all necessary diagrams and documentation)

If this application is approved, I accept full responsibility for any actions of the vendor or contractor or their employees for any damage or alteration which may occur to Monterey Cove common areas or any other property in Monterey Cove as a result of this project and agree to replace or restore such

damaged property to its original condition. I further agree that I will be responsible to obtain all appropriate permits, licenses or insurance as may be required by City, County or State agencies prior to commencement of this project. All work (with the exception of trees) will be completed within 9 months from the date of the written approval.

Date: 3-16-21 Owner's Signature: *K. J. Cullen* Project Start Date: *Pending approval*
Jeanne Fisher Cullen *Hopefully by mid to late May 2021*

Note: Plans are reviewed for the limited purpose of determining aesthetic compatibility with the community in general in the subject opinion of the approving authority and whether the plan is in compliance with the declaration of covenants and restrictions. Plans are approved or disapproved on a limited basis. No review has been made with respect to functionality, safety, compliance with governmental regulations, or otherwise, and no reliance on approval should be made by any party with respect to such matters. The approving authority disclaims liability of any kind with respect to submitted plans, the review of, or any structure built, including but not limited to, liability for negligence or breach of express or implied warrant.

Date: 4-20-2021 Approved: ☒ *[Signature]* Disapproved: _____

For office use:

- ☒ Application completed and signed
- ☒ Supporting documentation attached
- ☒ Plot plans included (if necessary)
- ☒ Color swatches attached (if necessary)

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

Case CPZ-11-2021 would be heard by the City Council on December 16, 2021.

NEW BUSINESS:

1. ****V-51-2021 - Michael and Jeanne Cullen - A Variance to allow a proposed swimming pool and deck to encroach 7 feet into the 10-foot rear accessory structure setback, as established by Section 185.118(A)(4) of the Palm Bay Code of Ordinances. Lot 4, Monterey Cove at Bayside Lakes, Section 19, Township 29, Range 37, Brevard County, Florida, containing approximately .17 acres. North of and adjacent to Gardendale Circle SE, in the vicinity east of Bramblewood Drive SE, specifically at 331 Gardendale Circle SE**

Mr. Balter presented the staff report for Case V-51-2021. The board had to determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Ms. Jeanne Cullen (applicant) stated that the close proximity between her home and the proposed swimming pool was not suitably safe for her visually impaired grandchild and wheelchair-bound grandfather.

Ms. Maragh asked if the swimming pool would be gated. Ms. Cullen stated that she planned to have a screen enclosed pool with a gate.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Mr. Weinberg noted that the variance was approved by the Monterey Cove at Bayside Lakes Homeowner's Association.

Motion to submit Case V-51-2021 to City Council for approval.

Motion by Mr. Hill, seconded by Ms. Maragh. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Resolution 2022-01, granting a conditional use to allow a proposed security dwelling unit in GC (General Commercial District) zoning on property located east of and adjacent to Thor Avenue, in the vicinity south of Agora Circle (0.56 acres) (Case CU-53-2021, Scott Macfarlane). (Quasi-Judicial Proceeding)

Mr. Scott Macfarlane has submitted a request for Conditional Use approval for a security dwelling unit in the GC, General Commercial District. The property is on the east side of Thor Avenue SE, between Agora Circle SE and Convair Street SE. The property contains a 4,170 square-foot warehouse with three (3) units.

The proposed security dwelling unit will not adversely impact the area since residential uses currently exist in Port Malabar Unit 40, and the GC district restricts the dwelling occupancy to a maximum of two (2) persons. The dwelling unit will be located within Unit B, the center unit in the warehouse. The property does not require any new driveways or access points, and parking requirements are met.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CU-53-2021, subject to the special requirements and conditions listed in the staff report to adhere to Section 185.088(I) as follows:

- The unit will only be permitted in conjunction with a site that has wholesale trade, warehousing, storage, contractor offices with storage, assembly, machine shops, commercial flex-space and/or similar uses.
- No one under the age of eighteen (18) may reside within the unit, and at no time may the unit be occupied by more than two (2) persons.
- The unit resident must be the owner of the property or an employee of the property owner. If the resident is not the owner, a signed and notarized contract between the property owner and the employee shall be provided to staff that addresses provisions for security.
- The unit may contain no more than one thousand (1,000) square feet of gross floor area and may not be located in a free-standing structure.
- There may be only one (1) security dwelling unit per property.

- There shall be at least one (1) parking space designated on-site for the resident of the unit.
- Applicants must demonstrate that approval of an onsite security dwelling minimizes the need for other security measures including but not limited to chain link fencing, strands of barbed wire atop fencing or walls and excessive security lighting thereby promoting a more aesthetically acceptable site development pattern.

Planning and Zoning Board Recommendation:

Unanimous approval of the request, subject to the special requirements and conditions listed in the staff report.

ATTACHMENTS:

Description

Case CU-53-2021 - Staff Report

Case CU-53-2021 - Survey and Floor Plan

Case CU-53-2021 - Application

Case CU-53-2021 - Board Minutes

Resolution 2022-01

Resolution 2022-01, Exhibit A

Resolution 2022-01, Exhibit B



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

CU-53-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

PROPERTY OWNER & APPLICANT

Scott Macfarlane

PROPERTY LOCATION/ADDRESS

Parcel ID 29-37-03-26-1985-14
Located at 261 Thor Avenue SE

SUMMARY OF REQUEST

Conditional Use approval for a Security Dwelling Unit in the GC, General Commercial zoning district

Existing Zoning

GC, General Commercial

Existing Land Use

Commercial Use

Site Improvements

Existing warehouse building

Site Acreage

0.56 acres

SURROUNDING ZONING & USE OF LAND

North

GC, General Commercial; Flex-Space Warehouse

East

GC, General Commercial; City Drainage Ditch

South

GC, General Commercial; Commercial Electric

West

GC, General Commercial; Thor Avenue SE

COMPREHENSIVE PLAN

COMPATIBILITY

Yes

BACKGROUND:

The subject property is located on the east side of Thor Avenue SE, between Agora Circle and Convoir Street, in Port Malabar Unit (PMU) 40. PMU 40 is a commercial and multi-family subdivision generally located SE of the intersection of Malabar Road and Babcock Street.

Specifically, the property is Lot 14, Block 1985; located in Section 3, Township 29 south, Range 37 east, Brevard County, Florida. The lot is approximately 0.56 acres. The property contains a warehouse building and was constructed in 2002. It includes approximately 4,170 square feet of warehouse space with three (3) units.

The applicant is requesting conditional use approval for a Security Dwelling Unit in the GC, General Commercial zoning district, as required by Section 185.054(D)(3) of the Palm Bay Code of Ordinances. The applicant for this request is Scott Macfarlane.

CODE REQUIREMENTS:

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

Item (A): *Adequate ingress and egress may be obtained to and from the property, with reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of emergency.*

According to the approved site plan, the property has one (1) driveway access onto Thor Avenue, which is sufficient for the size of the existing facility. No new driveways or access points are proposed.

Item (B): *Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.*

The existing building contains three (3) units. Unit A has a commercial space with an attached warehouse (west side of building), and so does Unit C (east side of building). Unit B is located in the center of the building, and this is where the dwelling unit will be located.

Based on the size of the building and their present uses, a total of five (5) parking spaces are required, with at least one of those spaces being handicapped accessible. According to the survey the site contains 11 regular spaces and one handicapped space.

Item (C): *Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.*

The property has city water & sewer, electric, phone and cable services available to it.

Item (D): *Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.*

The site plan provides the required buffering. No screening of the dwelling unit is needed.

Item (E): *Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.*

One (1) detached sign exists just north of the Thor Avenue driveway. There are existing wall lights on the face of the building. The plans do not propose additional signs or lighting.

Item (F): *Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.*

The property meets the required yard and open space requirements.

Item (G): *The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.*

Per the GC District requirements, only a maximum of two (2) persons may occupy the unit. Therefore, the use covered by this request will not create a traffic nuisance.

Item (H): *The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.*

The project itself includes a flex-space warehouse building that is consistent with existing development of Port Malabar Unit 40. Since residential uses already exist within Unit 40, the security dwelling unit will not have an adverse impact.

Item (I): *Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.*

The Planning and Zoning Board and City Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

In addition to the above General Requirements and Conditions, this request shall adhere to the **Special Requirements and Conditions** listed in Section 185.088 (I). They are:

(1) The unit will only be permitted in conjunction with a site that has wholesale trade, warehousing, storage, contractor offices with storage, assembly, machine shops, commercial flex-space and/or similar uses.

(2) No one under the age of eighteen (18) may reside within the unit, and at no time may the unit be occupied by more than two (2) persons.

(3) The unit resident must be the owner of the property or an employee of the property owner. If the resident is not the owner, a signed and notarized contract between the property owner and the employee shall be provided to staff that addresses provisions for security.

(4) The unit may contain no more than one thousand (1,000) square feet of gross floor area and may not be located in a free-standing structure.

(5) There may be only one (1) security dwelling unit per property.

(6) There shall be at least one (1) parking space designated on-site for the resident of the unit.

(7) Applicants must demonstrate that approval of an onsite security dwelling minimizes the need for other security measures including but not limited to chain link fencing, strands of barbed wire atop fencing or walls and excessive security lighting thereby promoting a more aesthetically acceptable site development pattern.

STAFF CONCLUSION:

Staff recommends approval of Case No. CU-53-2021, subject to the special requirements and conditions listed in this report.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



SITE LOCATION MAP CASE: CU-53-2021

Subject Property

East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.

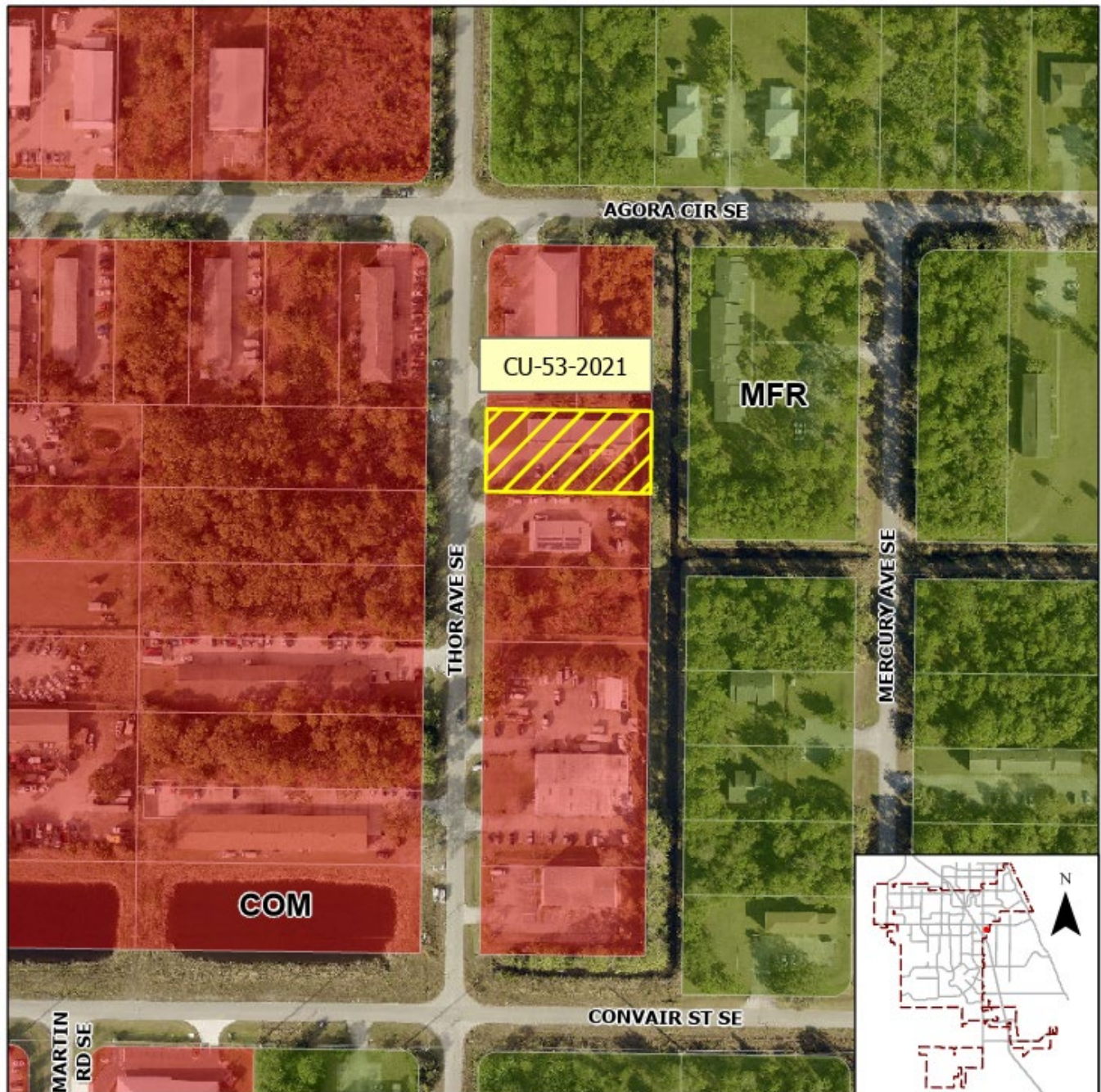


AERIAL LOCATION MAP CASE: CU-53-2021

Subject Property

East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE: CU-53-2021

Subject Property

East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE

Future Land Use Classification

COM – Commercial Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

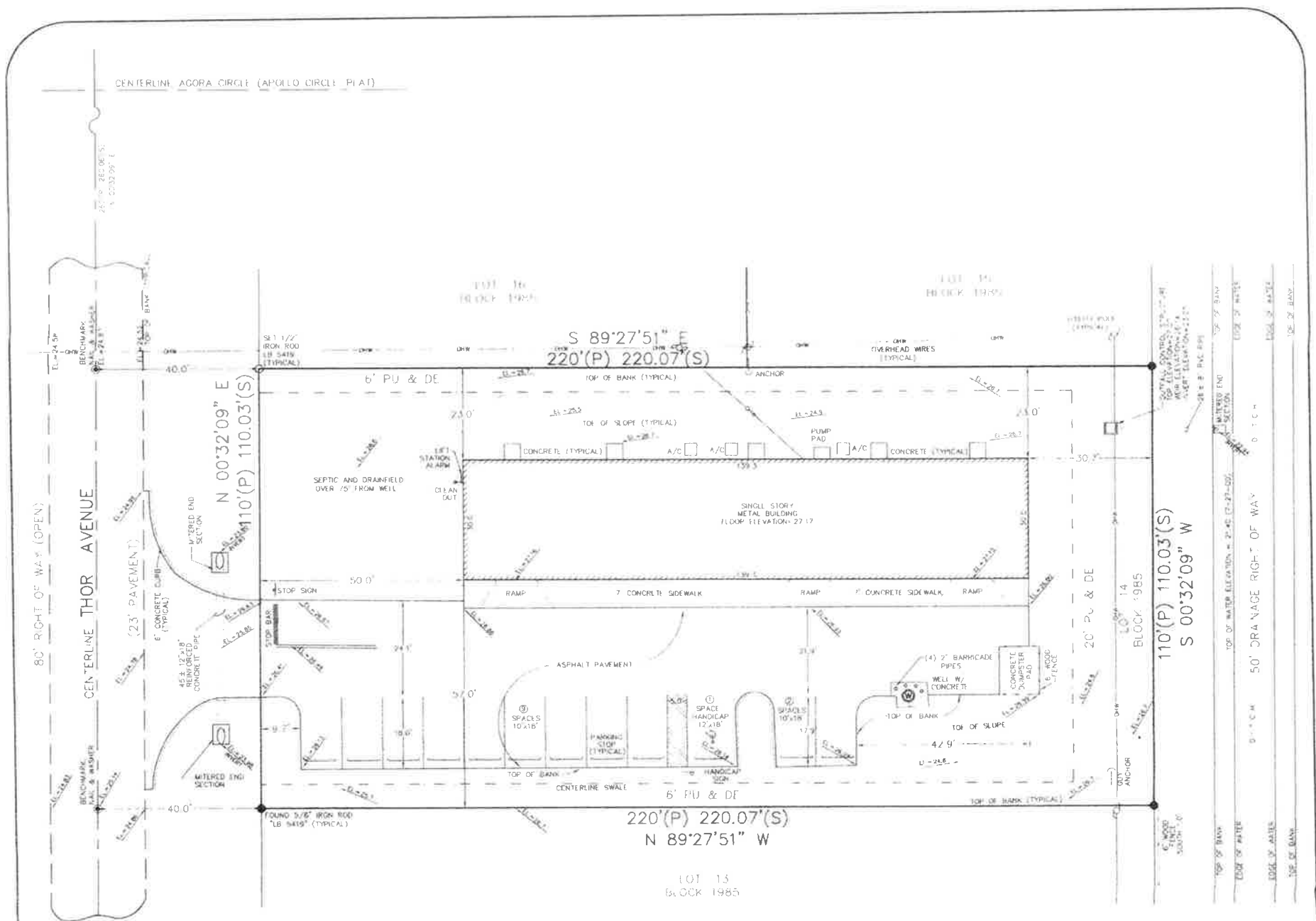
CASE: CU-53-2021

Subject Property

East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE

Current Zoning Classification

GC – General Commercial District



MAP OF
BOUNDARY
SURVEY

CERTIFIED TO:
PAULINE V. & WINSTON BORLAND
TESFA BORLAND
MONIQUE BORLAND
ANCO STRUCTURES, INC.(ASI)

DESCRIPTION

LOT 14, BLOCK 1985 PORT MALABAR UNIT FORTY ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGES 29 THRU 33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

NOTES:

- 1.) BEARINGS BASED ON THE ASSUMPTION THAT THE CENTERLINE OF THOR AVENUE BEARS N 00°32'09" E PER PLAT OF PORT MALABAR UNIT FORTY.
- 2.) LOT DIMENSIONS ARE AS PLATTED(P) AND SURVEYED(S) UNLESS OTHERWISE NOTED.
- 3.) ELEVATIONS "EL.=25.14" BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929.
- 4.) PROPERTY LIES WITHIN SECTION 3, TOWNSHIP 29 SOUTH, RANGE 37 EAST.
- 5.) PU & DE DENOTES PUBLIC UTILITIES AND DRAINAGE FACILITIES EASEMENT.
- 6.) PROPERTY LIES WITHIN FLOOD ZONE "X" PER FLOOD INSURANCE RATE MAP NUMBER 12009C0605E.
- 7.) AS-BUILT SURVEY 05-30-02

SURVEY DATE: MAY 30, 2002	JOB NO: 00-422
SCALE: 1" = 20'	FIELD BOOK: R10
PAGE: 49	

WJS WILLIAM J. SUITER
LAND
SURVEYING, INC.

1849 CANOVA STREET SE
PALM BAY, FLORIDA 32909

(407) 728-0553
FAX (407) 729-6773

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

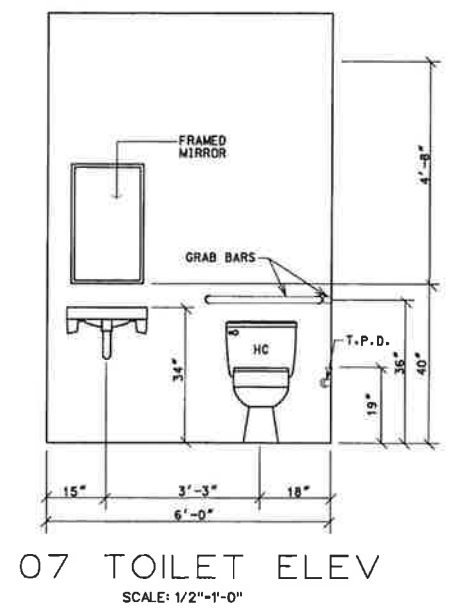
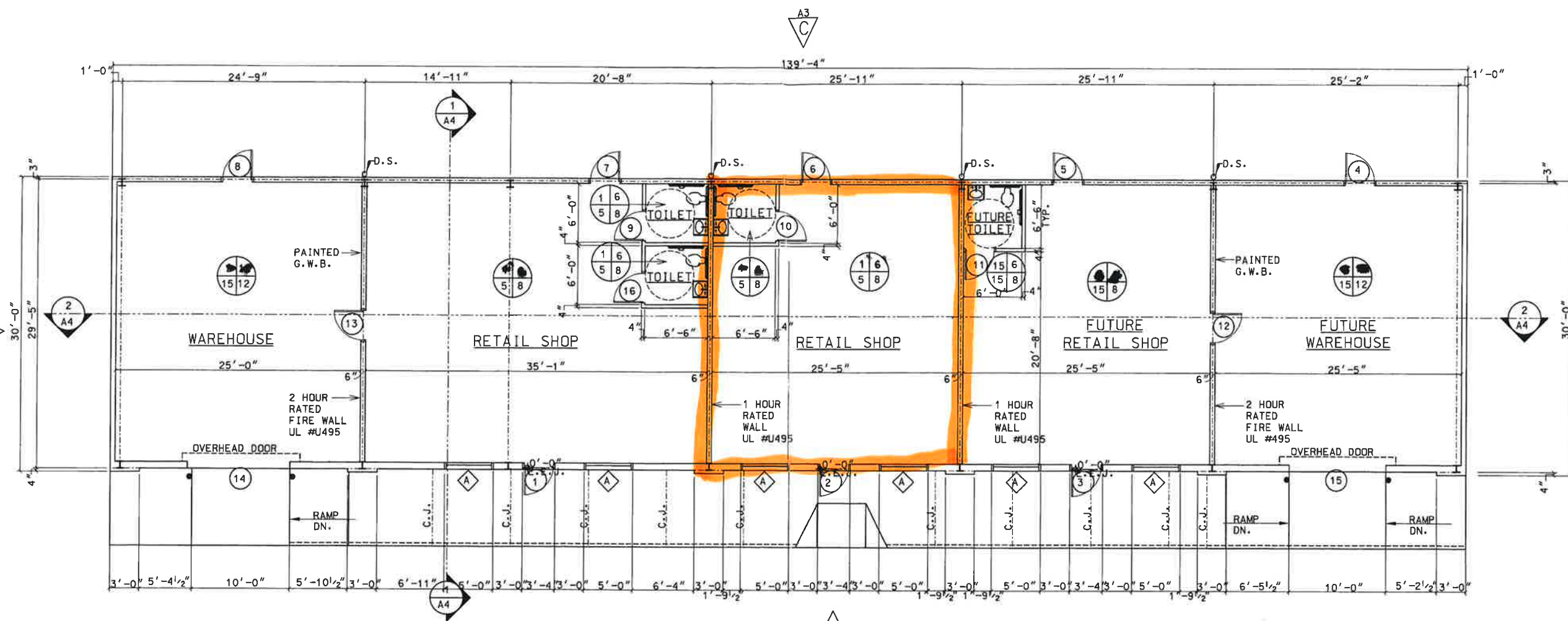
PROFESSIONAL SURVEYOR AND MAPPER IN RESPONSIBLE CHARGE
WILLIAM J. SUITER FLORIDA CERTIFICATE NO. 4210
JEFFREY S. HATTENDORF FLORIDA CERTIFICATE NO. 6193
CERTIFICATE OF AUTHORIZATION #LB 5419

DATE OF SIGNATURE
6-1-2002

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JUN 13 2002

974



DESIGN NO. 11/10
NONBEARING WALL RATING - 1 OR 2 HR.
(SEE ITEMS 5 AND 7)

HORIZONTAL SECTION

- FLOOR AND CEILING RUNNERS - (NOT SHOWN) - CHANNEL-SHAPED RUNNERS, 3-5/8 IN. WIDE (MIN.), 1-1/4 IN. LESS, FORMED WITH NO. 25 M&S (MIN.) GALV. STEEL, ATTACHED TO FLOOR AND CEILING WITH FASTENERS SPACED 24 IN. OC MAX.
- STEEL STUDS-CHANNEL-SHAPED 3-5/8 IN. WIDE (MIN.), 1-1/4 IN. LESS, 3/8 IN. FOLDED BACK RETURN, FORMED FROM NO. 25 M&S (MIN.) GALV. STEEL, SPACED 24 IN. OC MAX.
- BOLTS AND BLANKETS-OPTIONAL, NOT SHOWN-MINERAL WOOL OR GLASS FIBER BATT PARTIALLY OR COMPLETELY FILLING STUD CAVITY.
- SCREW-TYPE 8 SELF-DRILLING SCREWS, 1-1/4 IN. LONG, (16R) AND 8-1/2 IN. LONG (2 HR).
- BUILDING UNIT-FOR 1 HR. RATING-NON-COMBUSTIBLE, THICK, 4 FT. WIDE, FACED GYPSUM BOARD PANELS WITH THE FACED SIDE ON THE INTERIOR WALL.

FIRE RESISTANCE RATINGS - ANSI/ULCS (BQW)-CONTINUED

CAVITY- PANELS ATTACHED TO STUDS AND FLOOR AND CEILING RUNNERS WITH SCREWS SPACED 8 IN. OC ALONG THE EDGES OF THE PANEL AND 19 IN. OC IN THE FIELD OF THE PANEL. JOINTS ORIENTED VERTICALLY AND STAGGERED ON OPPOSITE SIDES OF THE ASSEMBLY.

GENERAL ELECTRIC COMPANY - TYPE COMBUSTIBLE
NATIONAL GYPSUM CO. - CHARLOTTE, NC-TYPE SOLO BOND FINE-SHIELD TYPE X HI-IMPACT BALLBOARDS OR SOLO BOND FINE-GRID TYPE X FULL-ROCK HI-IMPACT PLASTER BASE.

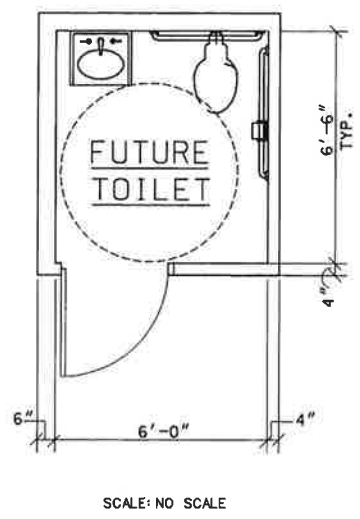
- JOINT TAPE AND COMPOUND-(NOT SHOWN) - VINYL, DRY OR PREMIXED JOINT COMPOUND, APPLIED IN TWO COATS TO JOINTS AND BENEATH PAPER TAPE, 2 IN. WIDE, EMBEDDED IN FIRST LAYER OF COMPOUND OVER ALL JOINTS.
- BALLBOARD, GYPSUM-FOR 2 HR. RATING-ANY CLASSIFIED (M, THICK (MINIMUM), 4 FT. WIDE, BALLBOARD APPLIED OVER EXTERIOR FACE OF BUILDING UNIT (EVEN B) AND APPLIED VERTICALLY WITH JOINTS STAGGERED 24 IN. FROM BUILDING UNIT (EVEN B) AND ATTACHED TO STUDS AND FLOOR AND CEILING RUNNERS WITH SCREWS SPACED 8 IN. OC.

SEE BALLBOARD, GYPSUM (COO) CATALOG FOR NAMES OF MANUFACTURERS, BEARING THE UL CLASSIFICATION MARKING.

1 FLOOR PLAN
SCALE: 3/16" = 1'-0"

FIXTURE LEGEND	
MARK	DESCRIPTION
1	FLR. MTD. H.C. TOILET w/TANK
2	GRAB BAR
3	FRAMED MIRROR (HANDICAP)
4	H.C. LAVATORY
5	TOILET TISSUE DISPENSER

NOTE: WRAP ALL EXPOSED PIPING AT H.C. LAVATORY WITH APPROVED INSULATING MATERIAL.



FINISH LEGEND	
MARK	DESCRIPTION
1	PAINTED G.W.B.
2	PAINTED G.W.B.
3	CARPET
4	QUARRY TILE
5	RUBBER COVE BASE
6	PAINTED G.W.B.
7	CERAMIC TILE
8	SUSPENDED ACOUSTICAL TILE
9	NOT USED
10	CERAMIC TILE BASE
11	1x6 T&G WOOD
12	PAINTED G.W.B.
13	PAINTED CMU
14	UNFINISHED CMU
15	NONE
16	EXPOSED STRUCTURE ABOVE
17	NOT USED
18	TEXTURED G.W.B.
19	NOT USED

FINISH SCHEDULE SYMBOL

FLR → WALLS
BASE → CLG

NOTE: PROVIDE FIRE CAULKING AT WALL/ROOF INTERSECTION AT 1 1/2 HOUR WALLS.



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
Landdevelopment@palmbayflorida.org

CONDITIONAL USE APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 29-37-03-26-1985-14

TAX ACCOUNT NUMBER 2923022

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

LT 14, BLOCK 1985, PORT MALABAR UNIT FORTY, ACCORDING TO THE
PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 29, OF THE
PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

261 Thor Ave SE

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): .56

ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.) 4830 WAREHOUSE/FLEX GC

CONDITIONAL USE SOUGHT security dwelling unit

General Commercial

CONDITIONAL USE REQUIREMENTS FOR SUBMITTAL (Section 185.087):

The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties per Section 185.085.

A SITE SKETCH TO SCALE MUST BE PROVIDED, AND ALSO PROVIDED ON MEMORY DRIVE, OF THE FOLLOWING:

- (A) Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- (B) Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.

CITY OF PALM BAY, FLORIDA
CONDITIONAL USE APPLICATION
PAGE 2 OF 3

- (C) Adequate and properly located utilities that are available or may be reasonably provided to serve the proposed development.
- (D) Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.
- (E) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.
- (F) Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.
- (G) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.
- (H) Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

ADDITIONAL CONDITIONS MUST BE MET AND INCORPORATED INTO THE SITE SKETCH FOR THE SPECIFIC CONDITIONAL USE.

Additional criteria is listed in Section 185.088 and available from staff (check all that apply):

- ☐ **Church** (Sec. 185.088(A))
- ☐ **Club or Lodge** (Sec. 185.088(B))
- ☐ **Commercial Dog Kennel** (Sec. 185.088(C))
- ☐ **Planned Industrial Development** (industrially zoned site over 5 acres) (Sec. 185.088(D))
- ☐ **Public or Private School** (Sec. 185.088(E))
- ☐ **Self-Storage Facility** (Sec. 185.088(F))
- ☐ **Communication Tower and Facilities** (Sec. 185.088(G))
- ☐ **Dance Club** (Sec. 185.088(H))
- ☒ **Security Dwelling Unit** (Sec. 185.088(I))
- ☐ **Wedding Venue** (Sec. 185.088(J))
- ☐ **Event Hall** (Sec. 185.088(K))

CITY OF PALM BAY, FLORIDA
CONDITIONAL USE APPLICATION
PAGE 3 OF 3

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☐ *\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ Site Sketch (See page 1 for requirements). Site Sketch must also be provided on Memory Drive.
- ☐ Sign(s) posted on the subject property. Refer to Section 51.07(C) of the Legislative Code for guideline.
- ☐ Citizen Participation Plan. Refer to Section 169.005 of the Land Development Code for guidelines.
- ☐ Where the property owner is not the representative for the request, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative _____

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Conditional Use application and that the facts stated in it are true.

Owner Signature

Date 10/17/21

Printed Name

SCOTT MACENTZLANE

Full Address

261 THOR AVE PALM BAY FL 32909

Telephone

8609167538

Email

MACENT10@YAHOO.COM

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

10/12/21

Scott Macfarlane
261 Thor Avenue SE
Palm Bay, FL 32909

I, Scott Macfarlane, Owner of 261 Thor Avenue SE, Palm Bay, FL 32909 seek approval to install a Security Dwelling Unit at 261 Thor Avenue SE, Unit B that will be occupied by myself.

Scott Macfarlane

A handwritten signature in blue ink, appearing to read 'Scott Macfarlane', with a long horizontal flourish extending to the right.

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

boarding. Out-of-town clients might need the boarding services for their dogs. He was opposed to the loss in taxes from permitting a 501(C) organization to locate on commercial property.

The floor was closed for public comments, and there was no correspondence in the file.

In response to public comments, Mr. Murphy explained that the applicants would continue to have the same tax-exempt status that they held at their previous Palm Bay location. Their relocation to an LI district was to have a larger building.

Motion to submit Case T-52-2021 to City Council for approval.

Motion by Mr. Boothroyd, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

3. ****CU-53-2021 - Scott Macfarlane - A Conditional Use to allow a proposed security dwelling unit in a GC, General Commercial District. Lot 14, Block 1985, Port Malabar Unit 40, Section 3, Township 29, Range 37, Brevard County, Florida, containing approximately .56 acres. East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE**

Mr. Murphy presented the staff report for Case CU-53-2021. Staff recommended Case CU-53-2021 for approval, subject to the special requirements and conditions listed in the staff report.

Mr. Scott Macfarlane (applicant) stated that he wanted the security dwelling unit at his upholstery and restoration business to secure customer vehicles and boats that were kept on his outdoor premises.

Mr. Weinberg wanted to know who would be living in the unit. Mr. Macfarlane stated that he would be living in the unit.

Ms. Maragh asked if the applicant had agreed to meet staff conditions. Mr. Macfarlane stated his agreement with the staff conditions.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Motion to submit Case CU-53-2021 to City Council for approval, subject to the special requirements and conditions listed in the staff report.

Motion by Mr. Boerema, seconded by Ms. Maragh. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

4. **CP-19-2021 - Steffany and Victor Lopez - A small-scale Comprehensive Plan Future Land Use Map amendment from Recreation and Open Space Use to Single Family Residential Use. Part of Tract A, Port Malabar Unit 12, Section 7, Township 29, Range 37, Brevard County, Florida, containing approximately 1.46 acres. South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE**

Mr. Murphy presented the staff report for Case CP-19-2021. Staff recommended Case CP-19-2021 for approval.

Ms. Maragh inquired whether the subject property was under contract with the City. Mr. Murphy explained that the subject site was privately owned by the applicant and not a City surplus site.

Ms. Steffany Lopez (applicant) stated that she and her husband had purchased the property approximately a year ago with the belief that a single-family home could be built on the site.

Ms. Maragh asked if the applicant would be selling the property. Ms. Lopez stated that she was unsure at this time but would likely build on half the site and sell the remainder. The initial plan was to build two homes for the family with her mother residing in the second home.

RESOLUTION 2022-01

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING A CONDITIONAL USE TO ALLOW A PROPOSED SECURITY DWELLING UNIT IN GC (GENERAL COMMERCIAL DISTRICT) ZONING; WHICH PROPERTY IS LOCATED EAST OF AND ADJACENT TO THOR AVENUE, IN THE VICINITY SOUTH OF AGORA CIRCLE, AND LEGALLY DESCRIBED HEREIN; GRANTING THE USE AS A CONDITIONAL USE; PROVIDING FOR CONSTRUCTION TO BE IN COMPLIANCE WITH THE SITE PLAN; PROVIDING FOR A COMMENCEMENT PERIOD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for a conditional use in GC (General Commercial District) zoning for a proposed security dwelling unit on property legally described herein, has been made by the Scott Macfarlane, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on December 1, 2021, which voted to recommend to the City Council approval of the application, and

WHEREAS, all provisions applicable to the conditional use under Chapter 185, Zoning, Conditional Uses, Sections 185.085 and 185.086, and District Regulations, Section 185.054, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

WHEREAS, the City Council of the City of Palm Bay has determined that such conditional use will neither be injurious to the neighborhood nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby grants a conditional use for a proposed security dwelling unit on property zoned GC (General Commercial District), which property is legally described as follows:

Lot 14, Block 1985, Port Malabar Unit 40, according to the plat thereof as recorded in Plat Book 21, Page 31, of the Public Records of Brevard County, Florida; Section 03, Township 29S, Range 37E; containing 0.56 acres, more or less.

SECTION 2. The conditional use is granted subject to the applicant complying with the special requirements and conditions listed in the Staff Report to adhere to Section 185.088(l) as follows:

- A) The unit shall only be permitted in conjunction with a site that has wholesale trade, warehousing, storage, contractor offices with storage, assembly, machine shops, commercial flex-space and/or similar uses;
- B) No one under the age of eighteen (18) may reside within the unit, and at no time shall the unit be occupied by more than two (2) persons;
- C) The unit resident shall be the owner of the property or an employee of the property owner. If the resident is not the owner, a signed and notarized contract between the property owner and the employee shall be provided to the staff that addresses provisions for security;
- D) The unit shall contain no more than one thousand (1,000) square feet of gross floor area and shall not be located in a free-standing structure;
- E) There shall be only one (1) security dwelling unit per property;
- F) There shall be at least one (1) parking space designated on-site for the resident of the unit;
- G) Applicants must demonstrate that approval of an onsite security dwelling minimizes the need for other security measures including but not limited to chain link fencing, strands of barbed wire atop fencing or walls, and excessive security lighting thereby promoting a more aesthetically acceptable site development pattern;
- F) Constructing the security dwelling unit in accordance with the site plan which is, by reference, incorporated herein as Exhibit 'A';

- G) The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit 'B'; and
- H) All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

SECTION 3. The conditional use must be commenced within one (1) year from the effective date of this resolution. Commencement shall mean the issuance of the appropriate permit(s) which must remain active. Failure to commence such construction within one (1) year shall void the conditional use.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2022- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2022.

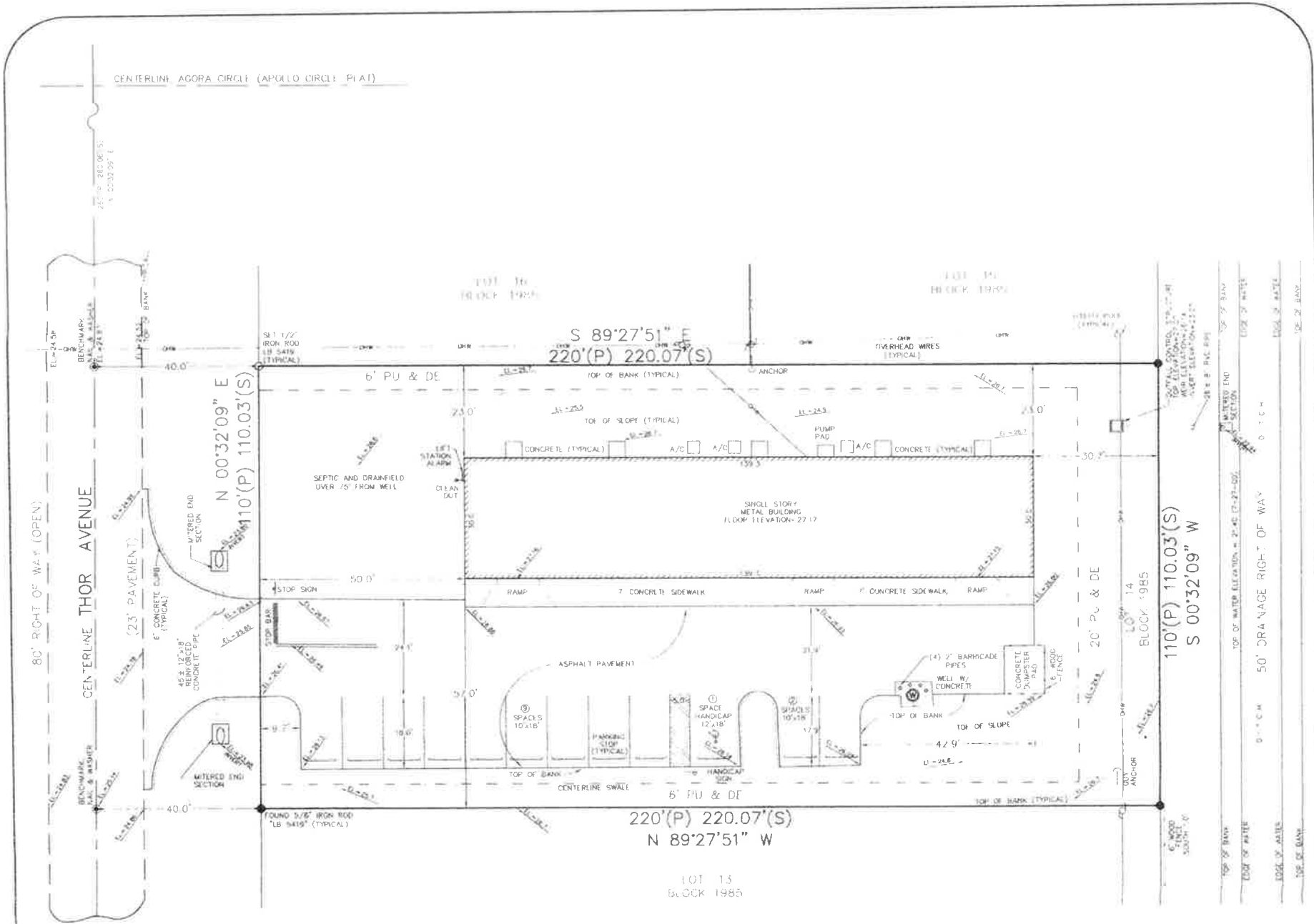
Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Applicant: Scott Macfarlane
Case: CU-53-2021

cc: (date) Brevard County Recording
Applicant
Case File



CERTIFIED TO:
PAULINE V. & WINSTON BORLAND
TESFA BORLAND
MONIQUE BORLAND
ANCO STRUCTURES, INC.(ASI)

DESCRIPTION

LOT 14, BLOCK 1985 PORT MALABAR UNIT FORTY ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGES 29 THRU 33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

- NOTES:
- 1.) BEARINGS BASED ON THE ASSUMPTION THAT THE CENTERLINE OF THOR AVENUE BEARS N 00°32'09" E PER PLAT OF PORT MALABAR UNIT FORTY.
 - 2.) LOT DIMENSIONS ARE AS PLATTED(P) AND SURVEYED(S) UNLESS OTHERWISE NOTED.
 - 3.) ELEVATIONS "EL.=25.14" BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929.
 - 4.) PROPERTY LIES WITHIN SECTION 3, TOWNSHIP 29 SOUTH, RANGE 37 EAST.
 - 5.) PU & DE DENOTES PUBLIC UTILITIES AND DRAINAGE FACILITIES EASEMENT.
 - 6.) PROPERTY LIES WITHIN FLOOD ZONE "X" PER FLOOD INSURANCE RATE MAP NUMBER 12009C0605E.
 - 7.) AS-BUILT SURVEY 05-30-02

SURVEY DATE: MAY 30, 2002		JOB NO: 00-422	
SCALE: 1" = 20'	FIELD BOOK: R10	PAGE: 49	
<div><p>WJS LAND SURVEYING, INC. WILLIAM J. SUITER 1849 CANOVA STREET SE PALM BAY, FLORIDA 32909 (407) 728-0553 FAX (407) 729-6773</p></div>			
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER			
<div><p>PROFESSIONAL SURVEYOR AND MAPPER IN RESPONSIBLE CHARGE WILLIAM J. SUITER JEFFREY S. HATTENDORF FLORIDA CERTIFICATE NO. 4210 FLORIDA CERTIFICATE NO. 6193 DATE OF SIGNATURE: 6-1-2002</p></div>			
COPYRIGHT © 2000 WILLIAM J. SUITER LAND SURVEYING, INC. ALL RIGHTS RESERVED			

JUN 13 2007

974



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

CU-53-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

PROPERTY OWNER & APPLICANT

Scott Macfarlane

PROPERTY LOCATION/ADDRESS

Parcel ID 29-37-03-26-1985-14
Located at 261 Thor Avenue SE

SUMMARY OF REQUEST

Conditional Use approval for a Security Dwelling Unit in the GC, General Commercial zoning district

Existing Zoning

GC, General Commercial

Existing Land Use

Commercial Use

Site Improvements

Existing warehouse building

Site Acreage

0.56 acres

SURROUNDING ZONING & USE OF LAND

North

GC, General Commercial; Flex-Space Warehouse

East

GC, General Commercial; City Drainage Ditch

South

GC, General Commercial; Commercial Electric

West

GC, General Commercial; Thor Avenue SE

COMPREHENSIVE PLAN

COMPATIBILITY

Yes

BACKGROUND:

The subject property is located on the east side of Thor Avenue SE, between Agora Circle and Convoir Street, in Port Malabar Unit (PMU) 40. PMU 40 is a commercial and multi-family subdivision generally located SE of the intersection of Malabar Road and Babcock Street.

Specifically, the property is Lot 14, Block 1985; located in Section 3, Township 29 south, Range 37 east, Brevard County, Florida. The lot is approximately 0.56 acres. The property contains a warehouse building and was constructed in 2002. It includes approximately 4,170 square feet of warehouse space with three (3) units.

The applicant is requesting conditional use approval for a Security Dwelling Unit in the GC, General Commercial zoning district, as required by Section 185.054(D)(3) of the Palm Bay Code of Ordinances. The applicant for this request is Scott Macfarlane.

CODE REQUIREMENTS:

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

Item (A): *Adequate ingress and egress may be obtained to and from the property, with reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of emergency.*

According to the approved site plan, the property has one (1) driveway access onto Thor Avenue, which is sufficient for the size of the existing facility. No new driveways or access points are proposed.

Item (B): *Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.*

The existing building contains three (3) units. Unit A has a commercial space with an attached warehouse (west side of building), and so does Unit C (east side of building). Unit B is located in the center of the building, and this is where the dwelling unit will be located.

Based on the size of the building and their present uses, a total of five (5) parking spaces are required, with at least one of those spaces being handicapped accessible. According to the survey the site contains 11 regular spaces and one handicapped space.

Item (C): *Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.*

The property has city water & sewer, electric, phone and cable services available to it.

Item (D): *Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.*

The site plan provides the required buffering. No screening of the dwelling unit is needed.

Item (E): *Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.*

One (1) detached sign exists just north of the Thor Avenue driveway. There are existing wall lights on the face of the building. The plans do not propose additional signs or lighting.

Item (F): *Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.*

The property meets the required yard and open space requirements.

Item (G): *The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.*

Per the GC District requirements, only a maximum of two (2) persons may occupy the unit. Therefore, the use covered by this request will not create a traffic nuisance.

Item (H): *The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.*

The project itself includes a flex-space warehouse building that is consistent with existing development of Port Malabar Unit 40. Since residential uses already exist within Unit 40, the security dwelling unit will not have an adverse impact.

Item (I): *Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.*

The Planning and Zoning Board and City Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

In addition to the above General Requirements and Conditions, this request shall adhere to the **Special Requirements and Conditions** listed in Section 185.088 (I). They are:

(1) The unit will only be permitted in conjunction with a site that has wholesale trade, warehousing, storage, contractor offices with storage, assembly, machine shops, commercial flex-space and/or similar uses.

(2) No one under the age of eighteen (18) may reside within the unit, and at no time may the unit be occupied by more than two (2) persons.

(3) The unit resident must be the owner of the property or an employee of the property owner. If the resident is not the owner, a signed and notarized contract between the property owner and the employee shall be provided to staff that addresses provisions for security.

(4) The unit may contain no more than one thousand (1,000) square feet of gross floor area and may not be located in a free-standing structure.

(5) There may be only one (1) security dwelling unit per property.

(6) There shall be at least one (1) parking space designated on-site for the resident of the unit.

(7) Applicants must demonstrate that approval of an onsite security dwelling minimizes the need for other security measures including but not limited to chain link fencing, strands of barbed wire atop fencing or walls and excessive security lighting thereby promoting a more aesthetically acceptable site development pattern.

STAFF CONCLUSION:

Staff recommends approval of Case No. CU-53-2021, subject to the special requirements and conditions listed in this report.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mehul Parekh, Public Works Director

DATE: 1/6/2022

RE: Ordinance 2022-02, vacating a portion of the rear public utility and drainage easement located within Lots 6 and 7, Block 2602, Port Malabar Unit 49 (Case VE-11-2021, Cynthia and Alfred Bernhofer), first reading.

Alfred and Cynthia Bernhofer has submitted an application to vacate the West 10 feet of the East 20 foot Public Utility and Drainage Easement of Lots 6 & 7, less and except the North 6 foot Public Utility and Drainage Easements of Lot 7, and less and except the South 6 foot Public Utility and Drainage Easements of Lot 6, thereof containing 1480 square feet, more or less, of Lots 6 & 7, Block 2602, Port Malabar Unit 49, according to the Plat thereof, as Recorded in Plat Book 22, Pages 140-167, of the Public Records of Brevard County, Florida, for an inground pool and screen enclosure.

REQUESTING DEPARTMENT:

Public Works

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to approve the vacating of easement with conditions per the analysis section of the staff report.

ATTACHMENTS:

Description

LEGISLATIVE MEMORANDUM - VE-11-2021

Ordinance 2022-02

PUBLIC WORKS DEPARTMENT STAFF REPORT

REQUEST TO VACATE EASEMENT

PROPOSAL: Request vacate the West 10 feet of the East 20 foot Public Utility and Drainage Easement of Lots 6 & 7, less and except the North 6 foot Public Utility and Drainage Easements of Lot 7, and less and except the South 6 foot Public Utility and Drainage Easements of Lot 6, thereof containing 1480 square feet, more or less, of Lots 6 & 7, Block 2602, Port Malabar Unit 49, according to the Plat thereof, as Recorded in Plat Book 22, Pages 140-167, of the Public Records of Brevard County, Florida, for an inground pool and screen enclosure.

LOCATION: 2151 Day Ave. SW
(Lots 6 & 7, Block 2602, Port Malabar Unit 49)

APPLICANT: Cynthia or Alfred Bernhofer

SITE DATA

PRESENT ZONING: RS-2 – Single-Family Residential

AREA OF VACATING: 1480 square feet, more or less

ADJACENT ZONING	N	RS-2 – Single-Family Residential
& LAND USE:	E	100' wide Melbourne Tillman Drainage Canal #13
	S	RS-2 – Single-Family Residential
	W	RS-2 – Single-Family Residential

STAFF ANALYSIS:

Vacation of Easement is requested to vacate the West 10 feet of the East 20 foot Public Utility and Drainage Easement of Lots 6 & 7, less and except the North 6 foot Public Utility and Drainage Easements of Lot 7, and less and except the South 6 foot Public Utility and Drainage Easements of Lot 6, thereof containing 1480 square feet, more or less, of Lots 6 & 7, Block 2602, Port Malabar Unit 49, according to the Plat thereof, as Recorded in Plat Book 22, Pages 140-167, of the Public Records of Brevard County, Florida, for an inground pool and screen enclosure..

AT&T, Florida Power and Light, Spectrum, Florida City Gas, and Melbourne-Tillman Water District have no objections to the vacating request.

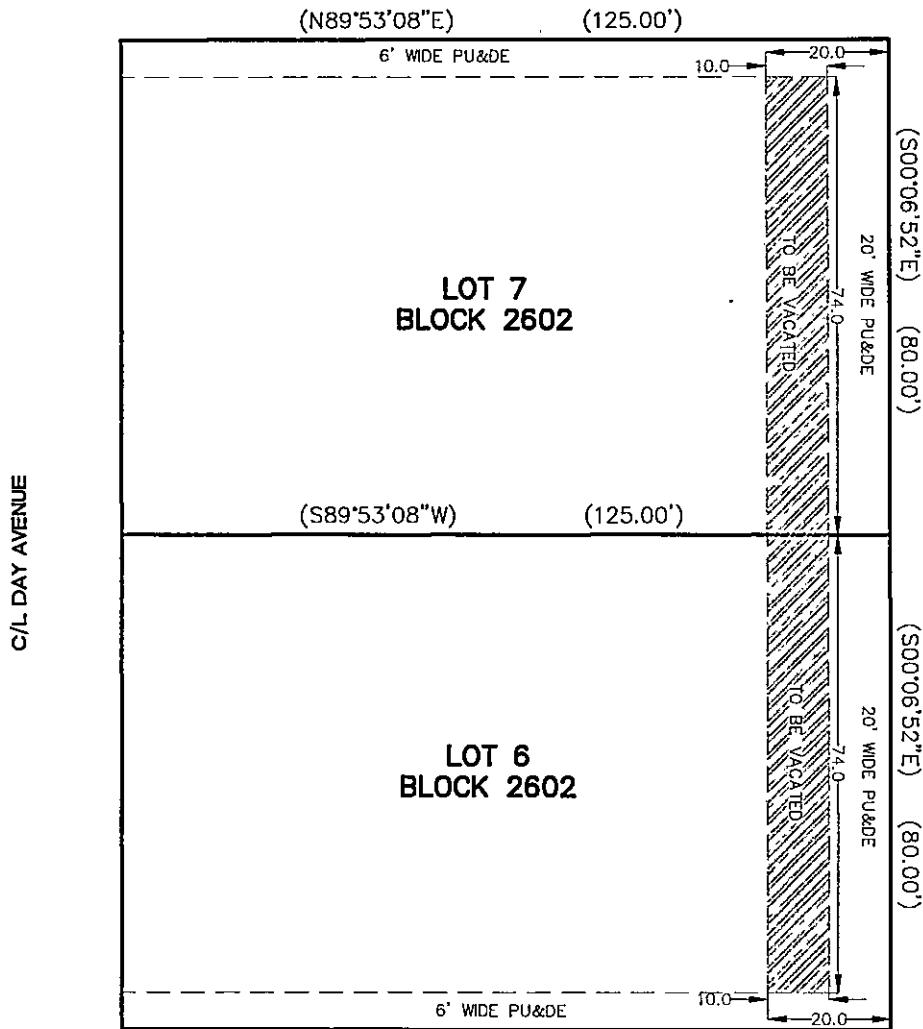
The City of Palm Bay's Departments have the enclosed comments relating to the vacating request. It should be noted that city policy allows for the approval of a vacation request for the first 5 feet, along city owned canals, if there are no obvious issues of conflict.

Staff has no adverse comments regarding removal of the West 10 feet of the East 20 foot Public Utility and Drainage Easement of Lots 6 & 7, less and except the North 6 foot Public Utility and Drainage Easements of Lot 7, and less and except the South 6 foot Public Utility and Drainage Easements of Lot 6, thereof containing 1480 square feet, more or less, of Lots 6 & 7, Block 2602, Port Malabar Unit 49, according to the Plat thereof, as Recorded in Plat Book 22, Pages 140-167, of the Public Records of Brevard County, Florida, for such an endeavor.

STAFF RECOMMENDATION:

Staff recommends approval of the vacating of easement with conditions per the analysis section of this staff report.

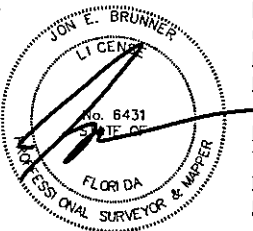
SKETCH OF DESCRIPTION



DESCRIPTION (TO BE CONVEYED)

BEING THE NORTH 74.0 FEET OF THE WEST 10.0 FEET OF THE EAST 20 FEET OF LOT 6, BLOCK 2602, PORT MALABAR UNIT FORTY NINE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 22, PAGES 140 THROUGH 167, INCLUSIVE, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

BEING THE SOUTH 74.0 FEET OF THE WEST 10.0 FEET OF THE EAST 20 FEET OF LOT 7, BLOCK 2602, PORT MALABAR UNIT FORTY NINE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 22, PAGES 140 THROUGH 167, INCLUSIVE, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.



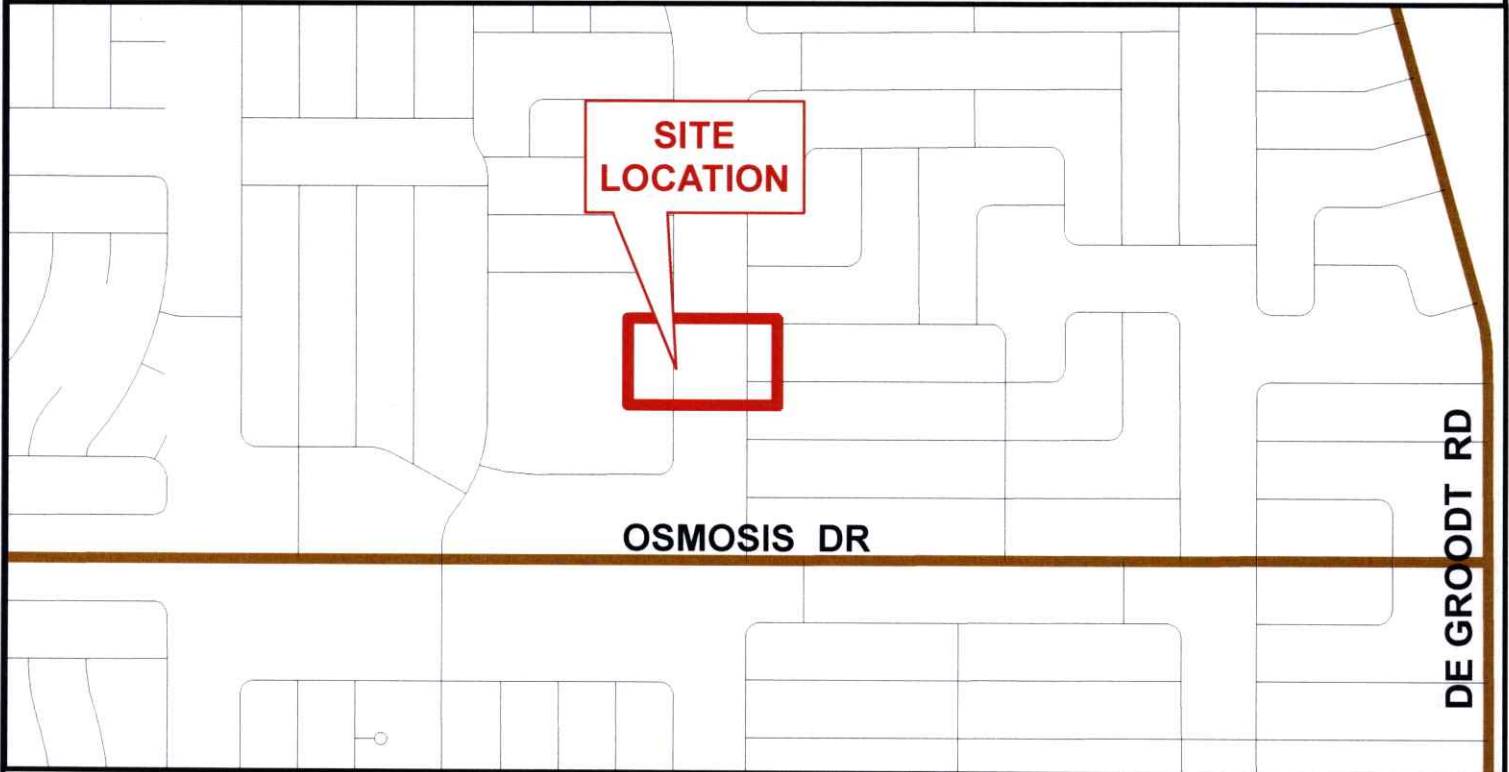
JON E. BRUNNER, FLORIDA PSM 6431
STATE OF FLORIDA

Jon Brunner

Digitally signed by Jon Brunner
Date: 2021.12.16 16:35:38
-05'00'

DATE: 10/10/21	SECTION 23	PAGE:	BRUNNER-HAGEN, INC. ENGINEERS AND LAND SURVEYORS 801 CAROLIN STREET, MELBOURNE, FL., 32901 PH (321) 728-1961 info@brunner-hagen.com
PROJECT: 831-21	TOWNSHIP 29 S	REVISION:	
SCALE: 1"=30'	RANGE 36 E	REVISION:	
		REVISION:	

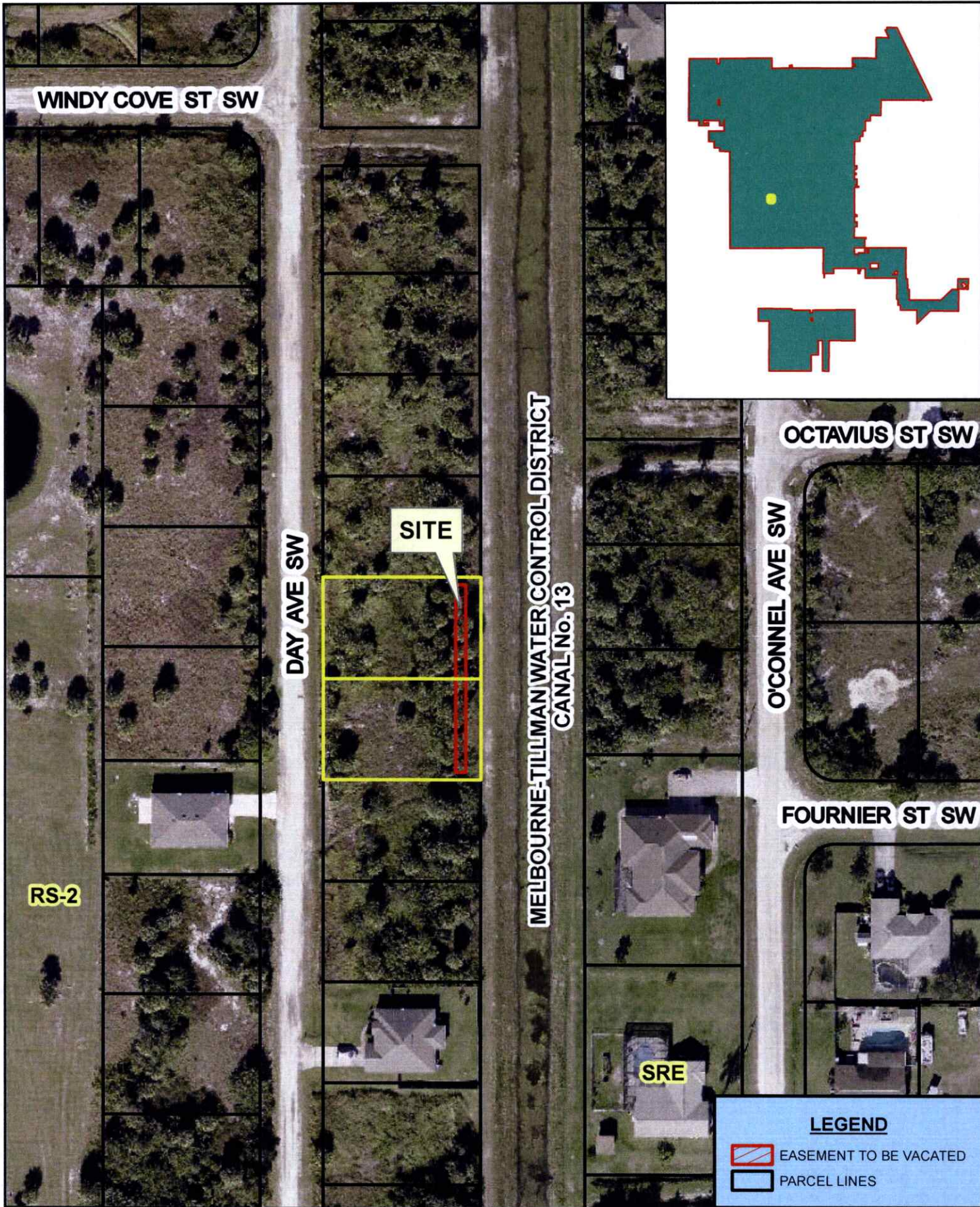
LOCATION MAP



Map is for illustrative purposes only!
Not to be construed as binding or a survey.
Map created by the City of Palm Bay
Public Works Department (RSD), on December 21, 2021.

VE-11-2021

0 25 50 100
Feet
1 inch = 100 feet



Map is for illustrative purposes only!
Not to be construed as binding or a survey.
Map created by the City of Palm Bay
Public Works Department (RSD), on December 21, 2021.

LOCATION MAP VE-11-2021

LEGEND

- EASEMENT TO BE VACATED
- PARCEL LINES

0 25 50 100 Feet
1 inch = 100 feet



VE-11-2021

PUBLIC WORKS DEPARTMENT

1050 MALABAR ROAD SW PALM BAY, FLORIDA 32907

PHONE: (321) 952-3403

EMAIL: pwpermitting@palmbayflorida.org

REQUEST TO VACATE EASEMENT/DRAINAGE RIGHTS-OF-WAY

This application must be completed, legible, and returned, with all attachments referred to herein, to the Public Works Department, Palm Bay, Florida. The request will then be reviewed by City staff and scheduled before the City Council. A minimum of eight (8) weeks is required to process the application. You or your representative are required to attend the hearing and will be notified by mail of the date and time of the meeting. The meeting will be held at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida, unless otherwise stated.

Name of Applicant (Please print): Cynthia for Alfred Bernhofer

Address: 353 Abalone Road NW

City: Palm Bay Zip Code: 32907

Phone Number: (321) 927-3858 Business Phone Number: N/A

Fax Number: N/A Email: cbernhofer62@gmail.com
abernhof@cfl.rr.com

LEGAL DESCRIPTION, PREPARED BY A CERTIFIED SURVEYOR, OF THAT PORTION OF THE EASEMENT REQUESTING TO BE VACATED UPON WHICH THE ENCROACHMENT IS PROPOSED OR CURRENTLY EXISTS:

Lot 6 and 7, Block 2602, Port Malabar unit forty nine (49)

2151 Day Ave SW

Section: 23 Township: 29S. Range: 36E.

Size of area covered by this application (calculate acreage): 0.46 acres

Zoning classification at present: X shaded

Which action applying for (easement, drainage): easement

Reason for requesting vacation and intended use: New construction. In-ground pool.

w/ screen enclosure.

If the encroachment currently exists, provide the date that a permit was issued by the Building Division.

The following enclosures are needed to complete this application:

1. \$182.00 Application Fee. Make check payable to "City of Palm Bay".
2. List of names and addresses of property owners abutting the lot or parcel within which the easement or drainage right-of-way is located;
3. Copy of plat, map, etc. depicting area location of easement or drainage right-of-way to be vacated.
4. Original notarized letters from the following utility and service companies are required stating whether or not they object to or if there is no interest in the vacating of the easement or drainage right-of-way. If equipment lies within the easement or drainage right-of-way requested for vacation, the applicant shall be responsible for any expenses incurred for relocating same, unless other arrangements have been made with the company.
5. See contacts listed below:

Are you the property owner of record?

Yes

No

If no, a notarized letter from the property owner must be attached giving consent to the applicant to request the vacating.

Contact the Land Development Division (321-733-3042) as to whether a variance is required. If Required, YOU MUST OBTAIN APPROVAL FOR THE VARIANCE PRIOR TO PROCEEDING WITH THE VACATING REQUEST.

Required

Not Required

Land Development Division

Date

9/17/21

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION AND ALL DATA ATTACHED MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE CITY COUNCIL.

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING REQUEST TO VACATE EASEMENT/DRAINAGE RIGHTS-OF-WAY APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant

C. Bernhofer

Date

29 Oct 2021

Printed Name of Applicant

ORDINANCE 2022-02

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE REAR TWENTY (20) FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT, LOCATED WITHIN LOTS 6 AND 7, BLOCK 2602, PORT MALABAR UNIT 49, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 22, PAGE 160, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Cynthia and Alfred Bernhofer have requested the City of Palm Bay, Florida, to vacate a portion of a certain public utility and drainage easement, which portion is legally described herein, and

WHEREAS, the vacation and abandonment of said portion of the public utility and drainage easement will neither adversely affect nor benefit the public.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby vacates and abandons a portion of the rear public utility and drainage easement located within Lots 6 and 7, Block 2602, Port Malabar Unit 49, according to the plat thereof as recorded in Plat Book 22, Page 160, of the Public Records of Brevard County, Florida, Section 23, Township 29S, Range 36E, being more particularly described as follows:

Being the north 74.0 feet of the west 10.0 feet of the east 20 feet of Lot 6, Block 2602, Port Malabar Unit 49, according to the plat thereof, recorded in Plat Book 22, Pages 140 through 167, inclusive, of the Public Records of Brevard County, Florida.

AND

Being the south 74.0 feet of the west 10.0 feet of the east 20 feet of Lot 7, Block 2602, Port Malabar Unit 49, according to the plat thereof, recorded in Plat Book 22, Pages 140 through 167, inclusive, of the Public Records of Brevard County, Florida.

Containing 1,480 square feet, more or less.

SECTION 2. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022- , held on , 2022; and read in title only and duly enacted at Meeting 2022- , held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Cynthia and Alfred Bernhofer
Case: VE-11-2021

cc: (date) Applicant
Case File
Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mehul Parekh, Public Works Director

DATE: 1/6/2022

RE: Ordinance 2022-03, vacating a portion of the side public utility and drainage easement located within Lot 21, Block 1998, Port Malabar Unit 42 (Case VE-12-2021, Gary Goodnight), first reading.

Gary Goodnight has submitted an application to vacate the East 10 feet of the West 20 foot Public Utility and Drainage Easement, less and except the North 20 foot Public Utility and Drainage Easement, thereof containing 1106 square feet, more or less, of Lot 21, Block 1998, Port Malabar Unit 42, according to the Plat thereof, as Recorded in Plat Book 21, Pages 105-125, of the Public Records of Brevard County, Florida, for a single family home.

REQUESTING DEPARTMENT:

Public Works

FISCAL IMPACT:

None

RECOMMENDATION:

Motion to approve the vacating of easement with conditions per the analysis section of the staff report.

ATTACHMENTS:

Description

LEGISLATIVE MEMORANDUM - VE-12-2021

Ordinance 2022-03



DATE: January 6, 2022
CASE #: VE-12-2021

PUBLIC WORKS DEPARTMENT STAFF REPORT

REQUEST TO VACATE EASEMENT

PROPOSAL: Request vacate the East 10 feet of the West 20 foot Public Utility and Drainage Easement, less and except the North 20 foot Public Utility and Drainage Easement, thereof containing 1106 square feet, more or less, of Lot 21, Block 1998, Port Malabar Unit 42, according to the Plat thereof, as Recorded in Plat Book 21, Pages 105-125, of the Public Records of Brevard County, Florida, for a single family home.

LOCATION: 1049 Banks St. NW
(Lot 21, Block 1998, Port Malabar Unit 42)

APPLICANT: Gary Goodnight

SITE DATA

PRESENT ZONING: RS-2 – Single-Family Residential

AREA OF VACATING: 1106 square feet, more or less

ADJACENT ZONING & LAND USE:	N	100' wide Melbourne Tillman Drainage Canal #67
	E	RS-2 – Single-Family Residential
	S	RS-2 – Single-Family Residential
	W	RS-2 – Single-Family Residential

STAFF ANALYSIS:

Vacation of Easement is requested to vacate the East 10 feet of the West 20 foot Public Utility and Drainage Easement, less and except the North 20 foot Public Utility and Drainage Easement, thereof containing 1106 square feet, more or less, of Lot 21, Block 1998, Port Malabar Unit 42, according to the Plat thereof, as Recorded in Plat Book 21, Pages 105-125, of the Public Records of Brevard County, Florida, for a single family home.

AT&T, Florida Power and Light, Spectrum, Florida City Gas, and Melbourne-Tillman Water District have no objections to the vacating request.

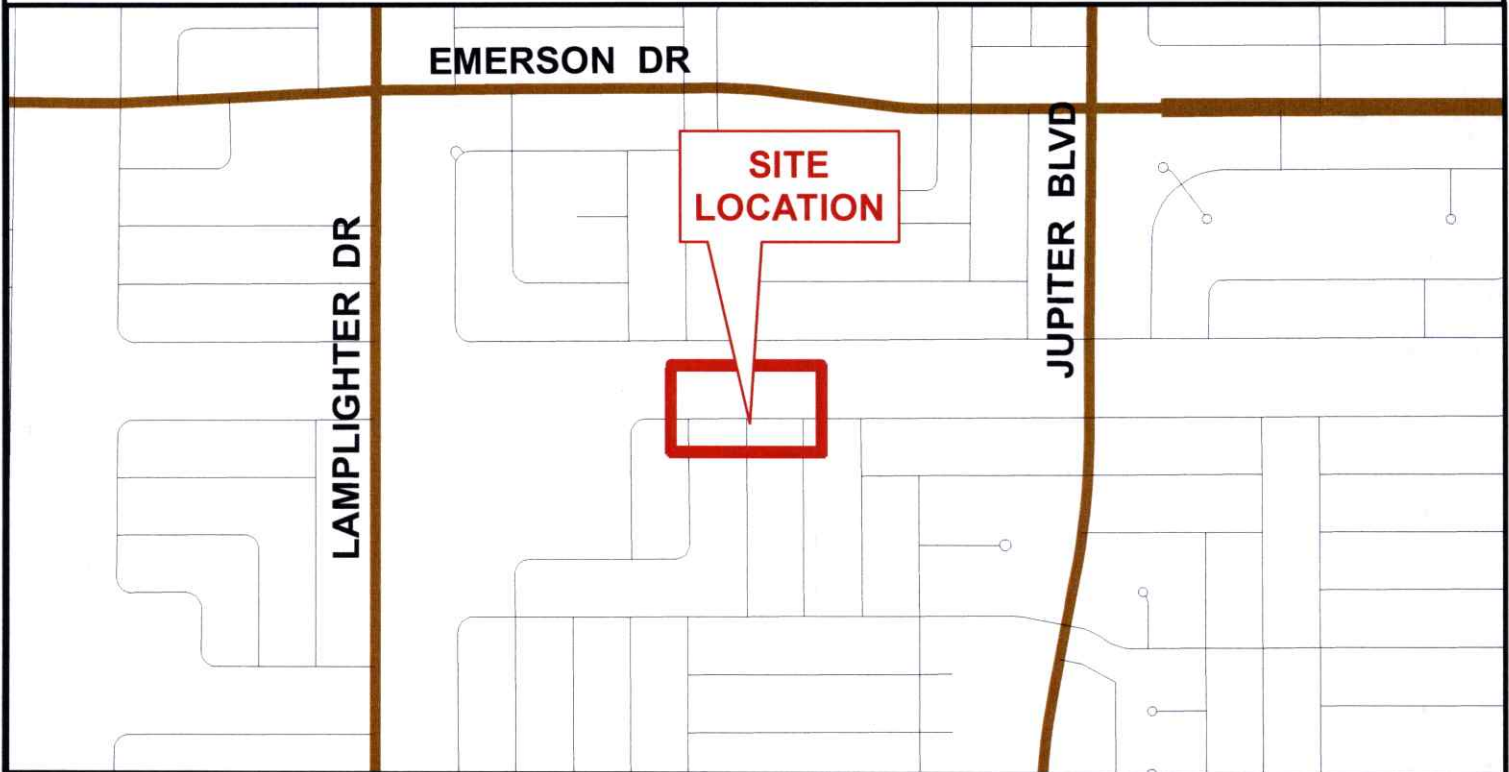
The City of Palm Bay's Departments have the enclosed comments relating to the vacating request. It should be noted that city policy allows for the approval of a vacation request for the first 5 feet, along city owned canals, if there are no obvious issues of conflict.

Staff has no adverse comments regarding removal of the East 10 feet of the West 20 foot Public Utility and Drainage Easement, less and except the North 20 foot Public Utility and Drainage Easement, thereof containing 1106 square feet, more or less, of Lot 21, Block 1998, Port Malabar Unit 42, according to the Plat thereof, as Recorded in Plat Book 21, Pages 105-125, of the Public Records of Brevard County, Florida, for such an endeavor.

STAFF RECOMMENDATION:

Staff recommends approval of the vacating of easement with conditions per the analysis section of this staff report.

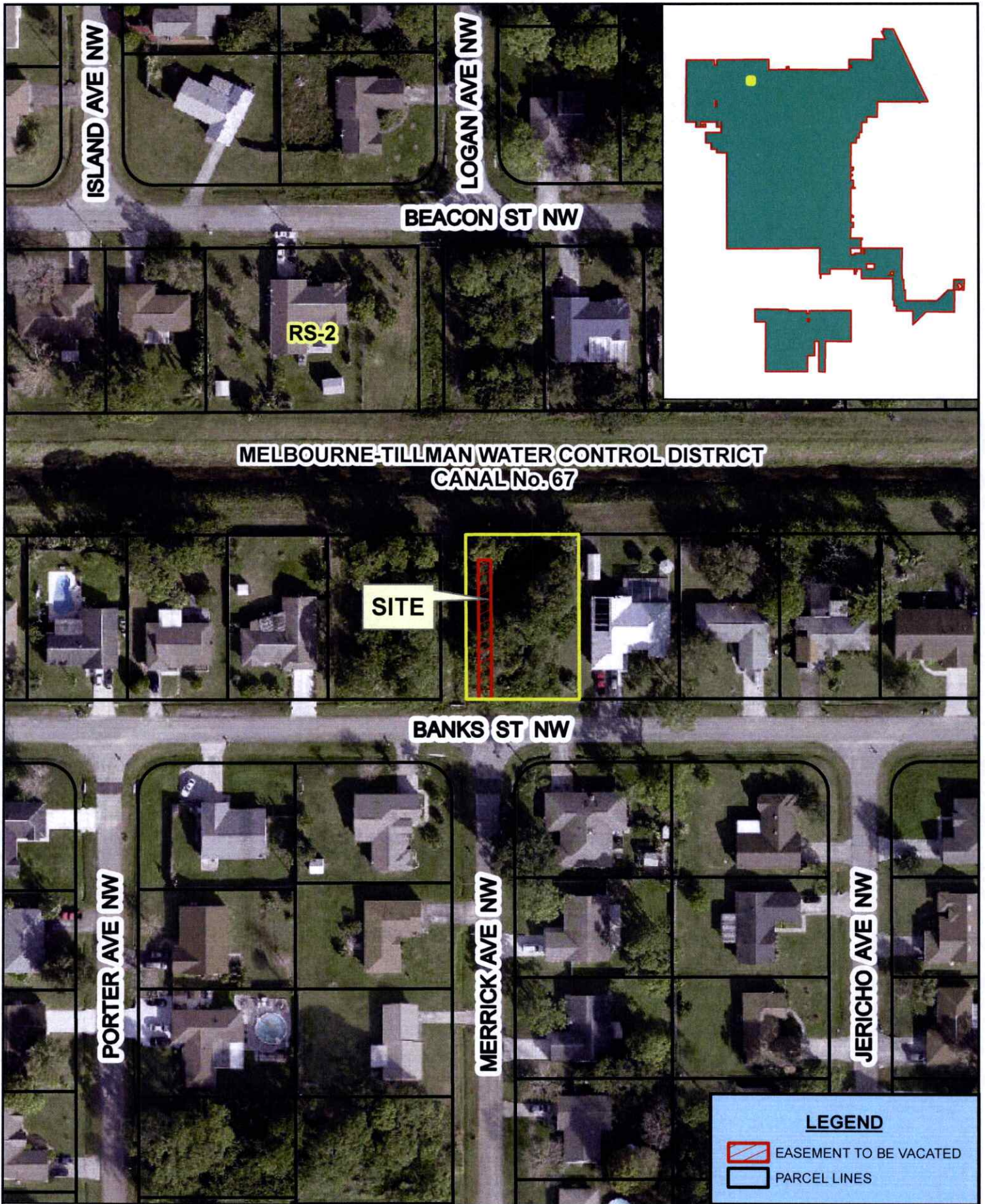
LOCATION MAP



Map is for illustrative purposes only!
Not to be construed as binding or a survey.
Map created by the City of Palm Bay
Public Works Department (RSD), on December 21, 2021.

VE-12-2021

0 25 50 100
Feet
1 inch = 100 feet



Map is for illustrative purposes only!
Not to be construed as binding or a survey.
Map created by the City of Palm Bay
Public Works Department (RSD), on December 21, 2021.

LOCATION MAP VE-12-2021

0 25 50 100
Feet
1 inch = 100 feet

**DESCRIPTION TO ACCOMPANY SKETCH
VACATE OF PUBLIC UTILITY AND DRAINAGE EASEMENT
1049 BANKS STREET NW, PALM BAY, FL 32907**

(NOT VALID WITHOUT SHEETS 1 & 2)

LEGAL DESCRIPTION: VACATE OF PUBLIC UTILITY EASEMENT

A PORTION OF A 20.00 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING WITHIN LOT 21, BLOCK 1998, PORT MALABAR UNIT FORTY TWO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGES 105-125, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 10.00 FEET OF THE WEST 20.00 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT. LESS AND EXCEPT THE NORTH 20.00 FOOT WIDE REAR EASEMENT THEREOF LYING WITHIN SAID LOT 21, BLOCK 1998.
CONTAINING 1106 SQUARE FEET OR 0.02 ACRES, MORE OR LESS

SURVEYORS NOTES:

1. THIS DESCRIPTION IS BASED UPON A SURVEY BY GSS SURVEYING & MAPPING, LLC, DATED 10-08-21.
2. THIS SKETCH EXISTS SOLELY FOR THE PURPOSE OF ILLUSTRATING THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED.
3. ALL DIMENSIONS ARE CALCULATED UNLESS OTHERWISE NOTED.
4. THIS SKETCH MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS IN CHAPTER 5J17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

GSS SURVEYING & MAPPING, LLC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 8006

Date:
2021.12.16
10:50:21 -05'00'



PROFESSIONAL SURVEYOR AND MAPPER IN RESPONSIBLE CHARGE

TERRY H. DRUM PROFESSIONAL SURVEYOR AND MAPPER NO. 5597
OR
HENRY A. KILBURN, PROFESSIONAL SURVEYOR AND MAPPER NO. 6661

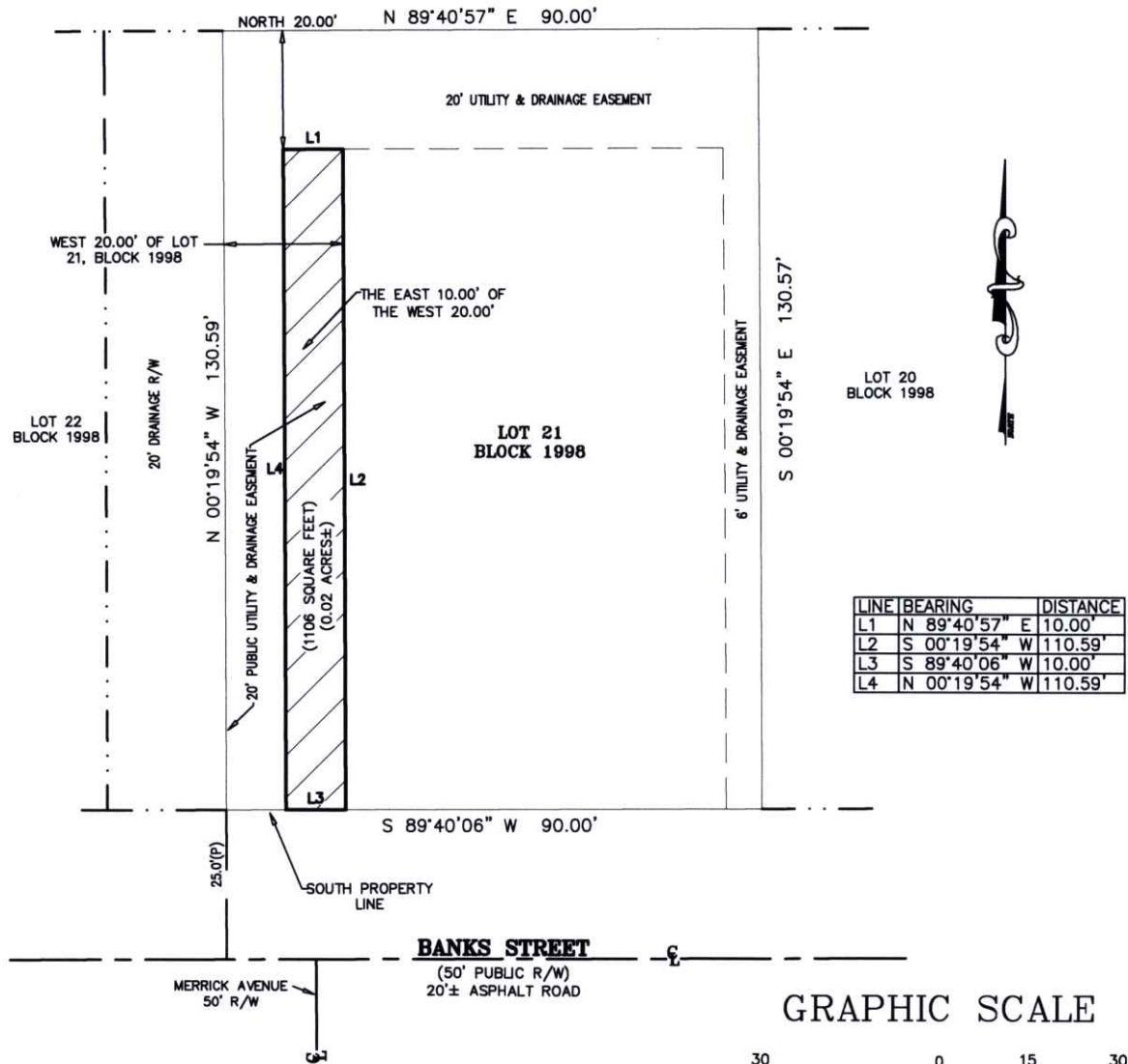
NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND RAISED SEAL OR DIGITAL SIGNATURE
AND DIGITAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOT VALID WITHOUT SHEET 2 OF 2
THIS IS NOT A BOUNDARY SURVEY

UPDATES and/or REVISIONS	REVISE TITLE	12-16-2021	EAD		
DATE 11-11-2021					PREPARED FOR: GOODNIGHT CONSTRUCTION
JOB #: 21-0946 SKETCH-DESC		<div style="display: flex; justify-content: space-between;"><div>GSS Surveying and Mapping, LLC 700 22nd Place Suite 2A Vero Beach, FL 32960 772-696-5300</div><div></div><div>GSS Surveying and Mapping, LLC 4620 Lipscomb St NE Suite 2 Palm Bay, FL 32905 321-914-3978</div></div>			
DRAWN BY: EAD					
CHECKED BY: HAK					
FIELD BOOK: N/A					
PAGE: 1 OF 2					
FIELD DATE: N/A					

**SKETCH TO ACCOMPANY DESCRIPTION
VACATE OF PUBLIC UTILITY AND DRAINAGE EASEMENT
1049 BANKS STREET NW, PALM BAY, FL 32907
(NOT VALID WITHOUT SHEETS 1 & 2)**

96' MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO. 67



SCALE 1:30 (1" = 30')

NOT VALID WITHOUT SHEET 1 OF 2
THIS IS NOT A BOUNDARY SURVEY

UPDATES and/or REVISIONS				
DATE 11-11-21				PREPARED FOR: GOODNIGHT CONSTRUCTION

JOB #: 21-0946 SKETCH-DESC

DRAWN BY: EAD

CHECKED BY: HAK

FIELD BOOK: N/A

PAGE: 2 OF 2

FIELD DATE: N/A

GSS Surveying and Mapping, LLC

700 22nd Place

Suite 2A

Vero Beach, FL 32960

772-696-5300



GSS Surveying and Mapping, LLC

4620 Lipscomb St NE

Suite 2

Palm Bay, FL 32905

321-914-3978



VE-12-2021

PUBLIC WORKS DEPARTMENT
1050 MALABAR ROAD SW PALM BAY, FLORIDA 32907
PHONE: (321) 952-3403
EMAIL: pwpermitting@palmbayflorida.org

REQUEST TO VACATE EASEMENT/DRAINAGE RIGHTS-OF-WAY

This application must be completed, legible, and returned, with all attachments referred to herein, to the Public Works Department, Palm Bay, Florida. The request will then be reviewed by City staff and scheduled before the City Council. A minimum of eight (8) weeks is required to process the application. You or your representative are required to attend the hearing and will be notified by mail of the date and time of the meeting. The meeting will be held at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida, unless otherwise stated.

Name of Applicant (Please print): GARY GOODNIGHT
Address: 1233 HALBER AVE NW
City: PALM BAY Zip Code: 32907
Phone Number: 321-795-4707 Business Phone Number: N/A
Fax Number: N/A Email: ggoodnight@CFL.RR.com

LEGAL DESCRIPTION, PREPARED BY A CERTIFIED SURVEYOR, OF THAT PORTION OF THE EASEMENT REQUESTING TO BE VACATED UPON WHICH THE ENCROACHMENT IS PROPOSED OR CURRENTLY EXISTS:

1049 Banks St. NW
Lot 21, Block 1998, PMU 42

Section: 26 Township: 28 Range: 36

Size of area covered by this application (calculate acreage): .27

Zoning classification at present: RS-2

Which action applying for (easement, drainage): _____

Reason for requesting vacation and intended use: BUILD OF SINGLE

FAMILY HOME

If the encroachment currently exists, provide the date that a permit was issued by the Building Division.

The following enclosures are needed to complete this application:

- ① \$182.00 Application Fee. Make check payable to "City of Palm Bay".
2. List of names and addresses of property owners abutting the lot or parcel within which the easement or drainage right-of-way is located;
3. Copy of plat, map, etc. depicting area location of easement or drainage right-of-way to be vacated.
4. Original notarized letters from the following utility and service companies are required stating whether or not they object to or if there is no interest in the vacating of the easement or drainage right-of-way. If equipment lies within the easement or drainage right-of-way requested for vacation, the applicant shall be responsible for any expenses incurred for relocating same, unless other arrangements have been made with the company.
5. See contacts listed below:

Are you the property owner of record? ☐ Yes ☒ No

If no, a notarized letter from the property owner must be attached giving consent to the applicant to request the vacating.

Contact the Land Development Division (321-733-3042) as to whether a variance is required. If Required, YOU MUST OBTAIN APPROVAL FOR THE VARIANCE PRIOR TO PROCEEDING WITH THE VACATING REQUEST.

☐ Required ☐ Not Required

Land Development Division _____ Date _____

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION AND ALL DATA ATTACHED MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE CITY COUNCIL.

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING REQUEST TO VACATE EASEMENT/DRAINAGE RIGHTS-OF-WAY APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Applicant  Date 11/15/21

Printed Name of Applicant _____

11/9/, 2021

Re: Letter of Authorization

As the property owner of the site legally described as _____
1049 Banks St. NW, Palm Bay, FL 32907

I hereby authorize Gary Goodnight
to represent my Vacate of Easement application for said property.

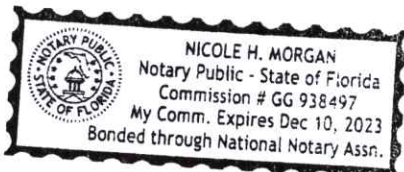
[Signature]
(Signature)

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 11-9-, 2021.
by NOAH CHAUSEN, who is personally known by me or
who has produced FIDL as identification,
and who did / /did not take an oath.

(SEAL)

[Signature]
_____, Notary Public
Serial No. GG 938477
My commission expires 12.10.2023



ORDINANCE 2022-03

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE SIDE TWENTY (20) FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT, LOCATED WITHIN LOT 21, BLOCK 1998, PORT MALABAR UNIT 42, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGE 111, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Gary Goodnight has requested the City of Palm Bay, Florida, to vacate a portion of a certain public utility and drainage easement, which portion is legally described herein, and

WHEREAS, the vacation and abandonment of said portion of the public utility and drainage easement will neither adversely affect nor benefit the public.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby vacates and abandons a portion of the side public utility and drainage easement located within Lot 21, Block 1998, Port Malabar Unit 42, according to the plat thereof as recorded in Plat Book 21, Page 111, of the Public Records of Brevard County, Florida, Section 26, Township 28S, Range 36E, being more particularly described as follows:

The east 10.00 feet of the west 20.00 foot wide public utility and drainage easement, less and except the north 20.00 foot wide rear easement thereof lying within said Lot 21, Block 1998; containing 1,106 square feet or 0.02 acres, more or less.

SECTION 2. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022- , held on , 2022; and read in
title only and duly enacted at Meeting 2022- , held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Gary Goodnight
Case: VE-12-2021

cc: (date) Applicant
Case File
Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-04, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations', by including canine training and similar uses as a permitted use in LI (Light Industrial and Warehousing District) zoning (Case T-52-2021, Michael Piazzola), first reading.

Mr. Michael Piazzola (Barbara Davis, Rep.) has submitted for a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to allow for canine training and similar uses, as a Permitted Use in the LI, Light Industrial and Warehousing District.

The proposed amendment will allow the applicant to move their operation, Indian River Dog Training Club, into a light industrial building on Robert J. Conlan Boulevard NE. Staff has drafted the amendment to best suit the applicant with consideration of the intent of the LI district. The amendment creates the ability to locate canine training facilities on LI property that is not within a multi-tenant building and with no overnight boarding of animals. Also of note, any permitted use in an LI district of five or more acres currently requires conditional use approval.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case T-52-2021.

Planning and Zoning Board Recommendation:

Unanimous approval of the request.

ATTACHMENTS:

Description

Case T-52-2021 - Staff Report

Case T-52-2021 - Application

Case T-52-2021 - Board Minutes

Ordinance 2022-04



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

T-52-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

APPLICANT

Michael Piazzola

PROPERTY LOCATION/ADDRESS

Not Applicable

SUMMARY OF REQUEST

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to allow for Canine Training and similar uses, as a Permitted Use in the LI – Light Industrial and Warehousing District.

Existing Zoning

Not Applicable

Existing Land Use

Not Applicable

Site Improvements

Not Applicable

Site Acreage

Not Applicable

SURROUNDING ZONING & USE OF LAND

North

Not Applicable

East

Not Applicable

South

Not Applicable

West

Not Applicable

BACKGROUND:

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.045 LI – Light Industrial and Warehousing District, creating 185.045(B)(15).

The applicant for this amendment is Michael Piazzola of the Indian River Dog Training Club, Inc. The applicant is looking to move the club into a building at 1651 Robert J. Conlan Blvd NE. The intended site is zoned LI – which does not allow for the proposed facility.

Proposed language for this amendment is attached in legislative style with additions between >>arrow<< symbols and deletions in ~~strikethrough~~ format.

ANALYSIS:

The zoning code is based on and has been adopted to effectuate and implement the policies of the city comprehensive plan to protect, preserve and improve the public health, safety, order, appearance, convenience, and welfare of the inhabitants of the city.

The provisions of the Light Industrial and Warehousing district are intended to apply to an area which can serve light manufacturing, warehousing, distribution, wholesaling and other light industrial functions for the city and the region. Lot sizes and other restrictions are intended to ensure sufficient open space and minimize adverse impacts of industrial uses off site and to nonindustrial uses.

While the applicant has proposed the text amendment for Canine Training and similar uses, as a Permitted Use the Light Industrial District, staff has drafted this amendment to be best suited for this proposed use, with consideration of the purpose of the zoning ordinance and the intent of the Light Industrial District.

The amendment would create the ability to locate a Canine Training Facility on a property with LI zoning, subject to the following: (1) The business cannot operate within a multi-tenant building; and (2) There may be no overnight boarding of animals. These provisions are included for the health and safety of the occupants of such a facility, as well as the occupants of adjacent businesses. It should be noted that any permitted use on a property zoned LI that includes five (5) or more acres, would require conditional use approval.

The applicant's proposed location is a "stand-alone" building on less than one (1) acre.

STAFF RECOMMENDATION:

Case T-52-2021 is recommended for approval.

TITLE XVII: LAND DEVELOPMENT CODE

CHAPTER 185: ZONING CODE

§ 185.045 LI — LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT.

(A) *Intent.* The provisions of this district are intended to apply to an area which can serve light manufacturing, warehousing, distribution, wholesaling and other light industrial functions for the city and the region. Lot sizes and other restrictions are intended to ensure sufficient open space and minimize adverse impacts of industrial uses off site and to nonindustrial uses.

(B) *Principal uses and structures:*

- (1) Warehousing within an enclosed structure.
- (2) Wholesaling within an enclosed structure.
- (3) Dry cleaning and laundry plants, printing plants, welding shops, machine shops, taxidermists and similar service and repair establishments and uses.
- (4) Light manufacturing, processing and assembly including precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing and similar uses.
- (5) Building materials supply and storage, provided that any outside display and/or storage area shall be screened on all sides to avoid any deleterious impact on adjacent properties; includes contractor storage yards.
- (6) Automotive, truck, major recreational equipment and mobile home sales, storage and repair establishment including, body shops, dry docking facilities, paint shops, upholstery shops and similar uses provided that outside storage of vehicles not for sale shall be effectively screened on four (4) sides so as to avoid off-site visual impacts.
- (7) Vocational and trade schools.
- (8) Veterinary hospitals and clinics including boarding of animals.
- (9) Radio or television transmitter, towers or broadcasting facilities.
- (10) Research and development facilities provided all activities are within an enclosed structure.
- (11) Public utility equipment and facilities.
- (12) Public uses.

(13) Communication towers and facilities.

(14) Medical Recycling Facility.

>>(15) Canine training and similar uses, subject to the following:

(a) The business cannot operate within a multi-tenant building; and

(b) There may be no overnight boarding of animals.<<

(C) *Accessory uses and structures:*

(1) Customary accessory uses clearly incidental and subordinate to one (1) or more principal uses.

(2) Retail sales of products manufactured, processed or stored on the premises, provided the sales area constitutes no more than 15% of the total area of the space occupied by the business.

(3) Offices clearly accessory to one (1) or more principal uses.

(D) *Conditional uses.*

(1) Automotive fuel, propane, and natural gas dispensaries and refueling stations subject to the following provisions:

(a) Location of facilities: All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from any municipal or public supply well.

(b) Liquid gasoline, liquid kerosene, or liquid diesel fuels may be stored onsite for use by the operator of the property and stored onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general public for onsite sales of such substances.

(c) Liquid and non-liquid propane, and liquid and non-liquid natural gas and other petroleum-based fuel products (including liquid gasoline, liquid kerosene, or liquid diesel fuel) may be stored onsite for the use of the operator of the property, stored and sold onsite for offsite delivery to the general public, and stored, dispensed, and sold onsite to the general property.

(d) The proposed use will not constitute a nuisance or hazard because of vehicular travel movement, delivery of fuel movement, noise or fume generation.

(e) Development and operation of the fuel pumps and attendant storage tanks shall be in compliance with §§ [176.01](#) *et seq.*

(2) Freight handling and transportation terminals.

(3) Planned industrial developments including office and business parks.

(4) Corrections facilities subject to the following:

(a) Minimum area required: 20 acres.

(b) Shall not be located within 1,000 feet of any residentially zoned property.

(5) Public and private schools.

(6) Tree and Landscape Recycling, subject to the following:

(a) A minimum lot size of 5 acres;

(b) An 8-foot opaque fence or wall surrounding the site on all sides;

(c) A 100-foot setback between any property line and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage);

(d) A 250-foot buffer between any residentially zoned land and any operation of tree or landscape recycling machinery (with the exception of vehicle or product storage);

(e) Tree and Landscape Recycling operations restricted to 8:00 a.m. to 6:00 p.m.;

(f) Strict adherence to Maximum Permissible Sound Levels for Industrial Land, as set forth in Table 1 of Section 92.06 of the Palm Bay Code of Ordinances.

(E) *Prohibited uses and structures:*

(1) All uses not specifically or provisionally permitted herein.

(F) *Lot and structure requirements:*

(1) Minimum lot area — twenty thousand (20,000) square feet.

(2) Minimum lot width — one hundred (100) feet.

(3) Minimum lot depth — two hundred (200) feet.

(4) Maximum building coverage — fifty percent (50%).

(5) Minimum floor area — None.

(6) Maximum height — one hundred (100) feet.

(7) Minimum yard requirements:

(a) Front — forty (40) feet minimum building setback, parking areas may be located in the front yard except within ten (10) feet of the front lot line.

(b) Side interior — twenty (20) feet minimum building setback. Parking areas may be located in the side yard except within ten (10) feet of the side lot line.

(c) Side corner — twenty-five (25) feet minimum building setback. Parking areas may be located in the side corner yard except within ten (10) feet of the side corner lot line.

(d) Rear — twenty-five (25) feet.

(8) An eight (8) foot high completely opaque masonry wall, or wood fence shall be provided along the entire length of any side or rear property line abutting property zoned residential. Landscaping shall be provided in accordance with the landscape requirements of this zoning code.



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopment@palmbayflorida.org

CODE TEXTUAL AMENDMENT APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:

185.045(B)(15)

PROPOSED LANGUAGE (attach addendum if necessary):

see attached
or

JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)

A Dog Training club, the objectives of this club is to Promote the training of Dogs, Conduct classes for the training of Dogs and their handlers, Encourage training of Judges, Hold and support trials, test, exhibitions, and matches under the rules and regulations of the American Kennel Club. This type of Warehouse Facility will benefit the club greatly in fulfilling its mission and vision of the future.

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☒ *\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Michael Piazzola Date 10-18-2021

Printed Name of Applicant MICHAEL PIAZZOLA

Full Address 1574 Nebraska St, NE. Palm Bay FL 32907

Cell Telephone 321-543-3451 Email LittleLuvbucket@Gmail.Com

PERSON TO BE NOTIFIED (If different from above):

Printed Name Barbara Davis

Full Address 1480 Meadowbrook Rd NE P.B. 32905

Telephone 407-719-1219 Email dillardbed@aol.com

*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY

RECEIVED

OCT 18 2021

City of Palm Bay
LAND DEVELOPMENT

GT
185.014(B)

(15) Canine Training and similar uses, subject to the following:

- (a) The business cannot operate within a multi-tenant building;
- (b) No overnight boarding of animals.

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

2. **T-52-2021 - Michael Piazzola (Barbara Davis, Rep.) - A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.045(B), to create provisions within the LI, Light Industrial and Warehousing District to allow for dog training clubs and similar uses**

Mr. Murphy presented the staff report for Case T-52-2021. Staff recommended Case T-52-2021 for approval.

Ms. Maragh asked if the amendment was for dogs to be trained during the day and sent home in the evenings. She wanted to know why the LI district was being proposed. Mr. Murphy stated that the general purpose of the amendment was to allow agility training for small dogs and their trainers for competitions. The LI district could accommodate the large warehouse structures that were needed for the enclosed and controlled activity.

Ms. Jordan questioned why the proposed use was not listed under veterinary hospitals and clinics for the LI district. Mr. Murphy explained that the proposal was specifically for dog training and was unrelated to the medical facilities.

Mr. Michael Piazzola (applicant) stated that warehouse environments were needed for their open spaces. Ms. Deborah Piazzola, his wife, added that their not-for-profit obedience training business had grown, and a new facility was needed to accommodate their growth.

Mr. Boerema asked if the applicant was currently occupying their new location. Mr. Piazzola confirmed that they were in their new building, which could accommodate their needs if the textual amendment was approved. Mr. Boerema noted that there was a fenced, adjacent side lot. Mr. and Ms. Piazzola commented that the side lot would be used by the business, but all training would occur indoors and there would be no boarding at the site.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) questioned why the dog training use could not be placed under the same category as livestock, which allowed for

boarding. Out-of-town clients might need the boarding services for their dogs. He was opposed to the loss in taxes from permitting a 501(C) organization to locate on commercial property.

The floor was closed for public comments, and there was no correspondence in the file.

In response to public comments, Mr. Murphy explained that the applicants would continue to have the same tax-exempt status that they held at their previous Palm Bay location. Their relocation to an LI district was to have a larger building.

Motion to submit Case T-52-2021 to City Council for approval.

Motion by Mr. Boothroyd, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

3. ****CU-53-2021 - Scott Macfarlane - A Conditional Use to allow a proposed security dwelling unit in a GC, General Commercial District. Lot 14, Block 1985, Port Malabar Unit 40, Section 3, Township 29, Range 37, Brevard County, Florida, containing approximately .56 acres. East of and adjacent to Thor Avenue SE, in the vicinity south of Agora Circle SE, specifically at 261 Thor Avenue SE**

Mr. Murphy presented the staff report for Case CU-53-2021. Staff recommended Case CU-53-2021 for approval, subject to the special requirements and conditions listed in the staff report.

Mr. Scott Macfarlane (applicant) stated that he wanted the security dwelling unit at his upholstery and restoration business to secure customer vehicles and boats that were kept on his outdoor premises.

Mr. Weinberg wanted to know who would be living in the unit. Mr. Macfarlane stated that he would be living in the unit.

ORDINANCE 2022-04

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 185, ZONING CODE, SUBCHAPTER 'DISTRICT REGULATIONS', BY INCLUDING CANINE TRAINING AND SIMILAR USES AS A PERMITTED USE IN LI (LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT) ZONING; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'District Regulations', Section 185.134, Architectural Style Requirements, is hereby amended and shall henceforth read as follows:

"Section 185.045 LI – LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT.

* * *

(B) *Principal uses and structures:*

* * *

>>(15) Canine training and similar uses, subject to the following:

(a) The business cannot operate within a multi-tenant building; and

(b) There may be no overnight boarding of animals.<<

* * *"

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022-XX, held on _____, 2022; and read in title only and duly enacted at Meeting 2022-XX, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: Michael Piazzola
Case: T-52-2021

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-05, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'Supplementary District Regulations', by modifying provisions related to the architectural appeal process (Case T-55-2021, City of Palm Bay), first reading.

The City of Palm Bay (Growth Management Department), at the request of City Management, has submitted for a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to streamline the architectural appeal process and facilitate commercial development.

In 2001, the City adopted language to require a regional architectural style known as Florida Vernacular for all new commercial construction along all commercial corridors. The City has since expanded the design criteria to other types of historic Florida structures. The proposed amendment will provide a more streamlined and efficient process for seeking architectural relief.

REQUESTING DEPARTMENT:

City Manager's Office, Growth Management

RECOMMENDATION:

Motion to approve Case T-55-2021.

Planning and Zoning Board Recommendation:

Unanimous approval of the request.

ATTACHMENTS:

Description

Case T-55-2021 - Staff Report

Case T-55-2021 - Application

Case T-55-2021 - Board Minutes

Ordinance 2022-05



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

T-55-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

APPLICANT

City of Palm Bay

PROPERTY LOCATION/ADDRESS

Not Applicable

SUMMARY OF REQUEST

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, to streamline the architectural appeal process and facilitate commercial development.

Existing Zoning

Not Applicable

Existing Land Use

Not Applicable

Site Improvements

Not Applicable

Site Acreage

Not Applicable

SURROUNDING ZONING & USE OF LAND

North

Not Applicable

East

Not Applicable

South

Not Applicable

West

Not Applicable

BACKGROUND:

A textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.134 Architectural Style Requirements.

The Growth Management Department, acting upon a request by City Management, has submitted this proposed text amendment.

The City adopted language in 2001 to require a regional architectural style a.k.a Florida Vernacular for all new commercial construction along all commercial corridors. The intent of the original language was to enhance the commercial corridors and “brand” the city with an architectural theme that recognized Florida’s historic structures.

Since the original adoption of the architectural requirements, the City has expanded the design criteria for other types of historic structures that per-dominated the Florida cityscape prior to the modern architectural movement.

Proposed language for this amendment is attached in legislative style with additions between >>arrow<< symbols and deletions in ~~strike through~~ format.

ANALYSIS:

The City proposes to modify Section 185.134 in order to provide a more streamlined and more efficient process for anyone seeking architectural relief as well

STAFF RECOMMENDATION:

Case T-55-2021 is recommended for approval.

TITLE XVII: LAND DEVELOPMENT CODE

CHAPTER 185: ZONING CODE

§ 185.134 ARCHITECTURAL STYLE REQUIREMENTS.

~~(A) The Bayfront Architectural Style shall include the following architectural elevations facing public rights-of-way within the NC, CC, HC, GC, RC and OP zoning districts located in the Bayfront Community Redevelopment District.~~

~~———— (1) A metal panel, 5-seam or metal shake roof is acceptable. A 5-tab twenty-five (25) year dimensional shingle roof or manufactured equivalent of a wood shake roof is acceptable. 3-tab shingles, barrel vaulted tiles, or corrugated roof systems are not permissible.~~

~~———— (2) Pitch of main roof, hipped or gable, shall be no greater than 5:12; mansard roof shall be no greater than 9:12; porch roof shall be a lower pitch than the main roof. A minimum 6" overhang is required for any roof structure. All structures must have a minimum 3:12 slope roof. Multiple roof systems with matching roof slopes are permissible. Low slopes ("Flat") roof systems are permissible when screened by a mansard roof or parapet wall meeting the design requirements.~~

~~———— (3) The predominant exterior color shall be pastel shades or white; earth tones are not acceptable except in brick.~~

~~———— (4) Manufactured brick or materials that have the appearance of brick are acceptable. Horizontally struck stucco, exterior insulated finish system stucco panels, board and batten, wood or vinyl siding, and stained hardwood panels shall also be considered acceptable finishes.~~

~~———— (5) Front porch. The front porch must encompass an area greater than fifty percent (50%) of the front facade. The porch must be a minimum of 60" in depth.~~

~~———— (6) Gingerbread trim and/or porch railings, columns or posts shall have the appearance of light frame wood construction.~~

~~———— (7) Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts, and other decorative elements). Trim finishes shall be of a contrasting lighter color than that of the primary building color except for white as a primary building color.~~

~~———— (8) There shall be no area greater than 400 square feet of contiguous blank wall area on any front facade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.~~

~~———— (9) There shall not be any singular facade that has greater than 100 lineal feet of run without a minimum 16" break, by using a directional or material change.~~

~~———— (10) Metal clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external "X" bracing is to be visible on any front facade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal clad structures as for any other new structure.~~

(B) >>(A)<< Structures must adhere to one (1) of the following Architectural Styles for architectural elevations facing public rights-of-way within the NC, CC, HC, RC, and OP zoning districts, and for structures constructed on a lot fronting any arterial or collector roadways in the GC zoning district, ~~located outside of the Bayfront Community Redevelopment District.~~ All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site equivalent to five percent (5%) for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(1) Florida Vernacular Architectural Style.

- (a) Masonry or frame construction.
- (b) Stuck stucco or lap siding finish.
- (c) Brick wainscot.
- (d) Architectural shingles or galvalume metal roof acceptable.
- (e) Exposed lookouts at truss ends, dentil molding, operable shutters that match the window width, period style lighting.
- (f) Limited color palette to pastel colors or white.
- (g) A front porch or overhang that has a minimum of sixty inches (60") width and encompasses a minimum of fifty percent (50%) of the main building façade.
- (h) No blank wall area to exceed four hundred (400) square feet of area.
- (i) No singular façade shall exceed one hundred (100) lineal feet of run without a minimum sixteen-inch (16") break, by utilizing a directional or material change.

(j) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.

(k) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ of the main floor shall be utilized for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. ~~Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~

(2) Mediterranean/Spanish Colonial.

(a) Masonry or frame construction.

(b) Heavy stucco or concrete finish.

(c) Barrel vaulted elements over windows and doors.

(d) Flat or low hip roof lines with interlocking terra-cotta roof tile.

(e) Terra cotta detailing, quoins, metalwork around windows and doors, relief around cornices, parapets, balconies and balustrades.

(f) Limited color palette of white, parchment and coral colors.

(g) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.

(h) All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(3) Spanish Revival.

(a) Masonry or frame construction.

(b) Heavy stucco or masonry finish.

(c) Barrel arch over windows and doors.

- (d) Flat, gable and/or hip roof lines with interlocking barrel style roof tile.
- (e) Iron work around windows.
- (f) Trim work around doors, parapets, windows and entryways.
- (g) Color palette of white or the patina of the masonry.

(h) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.

(i) All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(4) Commercial American.

- (a) Traversable arcade of fabric awning or structural roof.
- (b) Recessed entryway and string course over storefront.
- (c) Flat or low slope roof.
- (d) Parapet with minor course banding and/or cornice.
- (e) Concrete or brick construction.
- (f) Large, fixed plate glass storefront windows.
- (g) Minor trim or fretwork.
- (h) Color palette typically reflects the base material (brick) or lighter colors.

(i) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.

(j) All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(5) Bungalow.

- (a) Brick or concrete wainscot or base.
- (b) Gable roof line with exposed rafters and secondary rooflines.
- (c) Decorative shake or shingle roof or metal roof.
- (d) Horizontal siding.
- (e) Tapered columns.
- (f) Exposed structural elements for detailing such as beams, ridge vents, rafters and purlins.
- (g) Useable front porch.
- (h) Color palette may vary.
- (i) Pre-engineered metal buildings or metal buildings that utilize a fastened metal horizontal girder by which an exterior wall is attached to is not permitted. No part of the exterior finish shall utilize metal cladding.
- (j) All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(C) >>(B)<< The predominant exterior color shall be applied to all sides of the structure.

(D) >>(C)<< The design requirements listed in subsections (A) and (B) above shall be applicable to all new construction in the district, and in the case of additions or renovations to, or development of, an existing building or project, where the renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme shall also be exempt from the design requirements herein.

(E) >>(D)<< The design requirements listed in subsections (A) and (B) above shall be applicable to all accessory buildings also. Any accessory structure not meeting this requirement shall be screened so as to not be visible from the public right-of-way. Mechanical equipment such as gasoline pumps, air and vacuum machines, drive-through menu boards

and speaker stations, drive-through teller stations, ATM's, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this subsection. All HVAC, wireless communication devices, Fire Suppression, Solar Panels, wind generation devices and similar equipment placed on any roof or above the roof line of any commercial structure shall be effectively screened as to not be seen by the public.

(F) >>(E)<< Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review.

(G) >>(F)<< Structures in the following use categories are exempt from the design review requirements of this subsection: public utility equipment, hospitals, churches, model home centers and buildings having federal, state or locally designated historical status.

(H) >>(G)<< The Sign Code shall be adhered to with the following exceptions:

(1) Materials: The color, construction, and material of each sign shall be compatible with the architecture on the site.

(2) Design: Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.

(3) Freestanding signs shall have landscaping at the base that is a minimum width of the sign above.

(4) Freestanding signs over twenty-five (25) feet in height shall be exempt from the design review requirements of this subsection but will require landscaping at the base of each sign that is a minimum width of the sign above.

(I) Appeals.

(1) The intent of City Council is that commercial structures adhere to the Architectural Style Requirements as described above during the administrative site plan review process for the city. The appeals process described below is intended to provide relief from those provisions only in unusual and unique circumstances. Subsection (J) describes an alternative process for Architectural Styles that do not conform to the style requirements of subsections (B) >>(A)<< through (H) >>(G)<<above.

(a) >>Alternative Architectural Styles<< ~~Appeals~~. When an applicant >>proposes an architectural style that does not conform to subsections (A) through (G) above, the applicant may pursue an Architectural Style Exception through<<, ~~they may appeal that decision to the~~ Growth Management Director for a final administrative decision. The ~~appeal~~ >>Exception<< shall be in the form of a letter indicating the reasons for the ~~appeal~~ >>request<< and the applicant's opinion of their adherence to the requirements. In rendering ~~that~~ >>the<< final decision, the Growth Management Director shall take into account the

overall level to which the architectural design complies with the requirements. If the applicant is not satisfied with the Final Administrative Decision, they may appeal that decision pursuant to § 59.04(6).

(J) ~~Alternative Architectural Styles~~ >>Appeals<<.

(1) Applicants who desire to >>appeal the decision of the Growth Management Director,<< ~~construct a building in the NC, CC, HC, GC, RC and OP zoning districts located outside of the Bayfront Community Redevelopment District and propose an architectural style that does not conform to subsections (B) through (H) above may opt to pursue an Architectural Style Exception~~ >>shall file a written appeal to<< ~~before~~ the Palm Bay City Council pursuant to this subsection.

(2) The City Council shall hold a minimum of one (1) public hearing in accordance with Chapter 59 to consider the ~~requested Exception~~ >>Appeal<<. The decision of Council shall be based upon the following:

(a) ~~—The quality of the architectural plans.~~

(b) ~~—The quality of the site plans.~~

(c) >>(a)<< The level to which the plans exceed the minimum requirements of the Palm Bay Code of Ordinances.

(d) >>(b)<< The economic >>impact to the local tax base of the City<< ~~or quality of life benefits expected to be received.~~

(e) >>(c)<< The impact of the project on other properties within the City.

(f) ~~—The architectural and site features described in subsection (J)(3) below.~~

(g) >>(d)<< Adherence to corporate >>or franchise<< branding.

The City Council's decision shall be considered the final City action on the matter.

(3) Prior to the public hearing required above, city staff shall prepare a report to Council that describes how the submitted site and architectural plans >>adhere to the Code, the request Exception, and the justification for the Final Administrative Decision.<<~~address the following issues:~~

~~—(a) Provisions for public gathering space including benches, tables, fountains, shade and weather coverings, landscaping treatments and similar features.~~

~~—(b) Scale in reference to nearby structures.~~

~~—(c) Exposure of roof-top or other equipment on the site.~~

~~_____ (d) _____ Proposed color palette.~~

~~_____ (e) _____ The extent to which the structure provides variation in roof lines.~~

~~_____ (f) _____ The extent to which the structure provides variation along the facade.~~

~~_____ (g) _____ The extent to which the site provides landscaping in excess of the minimum standards in the Code of Ordinances and the extent to which the landscaping compliments the building.~~

~~_____ (h) _____ The extent to which the lighting plan minimizes impact to adjacent properties, accentuates the positive features of the building and site and adherence to all requirements contained in the Code of Ordinances.~~

~~_____ (i) _____ The extent to which the signage on both the site and the building compliment the style proposed.~~

~~_____ (j) _____ The extent to which the building materials compliment the proposed architectural style and the extent to which the finish represents a final appearance. Exposed concrete block, prefabricated metal panels, smooth faced concrete panels or block and similar treatments are not considered appropriate.~~

~~_____ (k) _____ The appropriateness of the roofing material and color for the architectural style proposed.~~

~~_____ (l) _____ The extent to which the site and building enhance pedestrian and alternate transportation systems such as provisions of transit stops, bicycle racks and onsite walkways.~~

~~_____ (m) _____ The extent to which the architectural features chosen by the applicant enhance the overall quality of the neighborhood and the city and are appropriately designed for the specific building and site under construction.~~

~~_____ (K) _____ The City Council may, by resolution, adopt such administrative policies, applications, manuals and/or fees as necessary to implement the design requirements identified above.~~



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
Landdevelopment@palmbayflorida.org

CODE TEXTUAL AMENDMENT APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

ORDINANCE SECTION(S) PROPOSED TO BE CHANGED:

Section 185.134

PROPOSED LANGUAGE (attach addendum if necessary):

See Attached

JUSTIFICATION FOR PROPOSED CHANGE (attach other documents if necessary)

Streamline the architectural appeal process and facilitate commercial development

CITY OF PALM BAY, FLORIDA
CODE TEXTUAL AMENDMENT APPLICATION
PAGE 2 OF 2

THE APPLICATION FEE MUST BE SUBMITTED WITH APPLICATION TO PROCESS THIS REQUEST:

☐ *\$1,500.00 Application Fee. Make Check payable to "City of Palm Bay."

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing code textual amendment application and that the facts stated in it are true.

Signature of Applicant Patrick J. Murphy Date 11/17/2021

Printed Name of Applicant Patrick J. Murphy, Acting Growth Management Director

Full Address 120 Malabar Road SE, Palm Bay, FL 32907

Telephone 321-733-3041 Email patrick.murphy@palmbayflorida.org

PERSON TO BE NOTIFIED (If different from above):

Printed Name _____

Full Address _____

Telephone _____ Email _____

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

8. **T-55-2021 – City of Palm Bay (Growth Management Department) - A Textual Amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.134, to modify provisions of the architectural ordinance**

Mr. Balter presented the staff report for Case T-55-2021. Staff recommended Case T-55-2021 for approval.

Mr. Boothroyd asked for clarification on whether the proposed amendment would remove the Florida vernacular architectural style from the code. Mr. Balter explained that the Bayfront architectural style was being removed from the code, and the process to gain relief from architectural requirements were being simplified. Relief would now be sought from the Growth Management Director instead of the City Council. However, architectural decisions by the Growth Management Director could be challenged before the City Council.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Motion to submit Case T-55-2021 to City Council for approval.

Motion by Mr. Hill, seconded by Ms. Jordan. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

OTHER BUSINESS:

Well wishes were expressed for Christmas and the New Year.

ADJOURNMENT:

The meeting was adjourned at approximately 8:41 p.m.

ORDINANCE 2022-05

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 185, ZONING CODE, SUBCHAPTER 'SUPPLEMENTARY DISTRICT REGULATIONS', BY MODIFYING PROVISIONS RELATED TO THE ARCHITECTURAL APPEAL PROCESS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'Supplementary District Regulations', Section 185.134, Architectural Style Requirements, is hereby amended and shall henceforth read as follows:

"Section 185.134 ARCHITECTURAL STYLE REQUIREMENTS.

~~(A) The Bayfront Architectural Style shall include the following architectural elevations facing public rights-of-way within the NC, CC, HC, GC, RC and OP zoning districts located in the Bayfront Community Redevelopment District.~~

~~(1) A metal panel, 5-seam or metal shake roof is acceptable. A 5-tab twenty-five (25) year dimensional shingle roof or manufactured equivalent of a wood shake roof is acceptable. 3-tab shingles, barrel vaulted tiles, or corrugated roof systems are not permissible.~~

~~(2) Pitch of main roof, hipped or gable, shall be no greater than 5:12; mansard roof shall be no greater than 9:12; porch roof shall be a lower pitch than the main roof. A minimum 6" overhang is required for any roof structure. All structures must have a minimum 3:12 slope roof. Multiple roof systems with matching roof slopes are permissible. Low slopes ("Flat") roof systems are permissible when screened by a mansard roof or parapet wall meeting the design requirements.~~

~~(3) The predominant exterior color shall be pastel shades or white; earth tones are not acceptable except in brick.~~

~~(4) Manufactured brick or materials that have the appearance of brick are acceptable. Horizontally struck stucco, exterior insulated finish system stucco panels, board and batten, wood or vinyl siding, and stained hardwood panels shall also be considered acceptable finishes.~~

~~(5) Front porch. The front porch must encompass an area greater than fifty percent (50%) of the front facade. The porch must be a minimum of 60" in depth.~~

~~(6) Gingerbread trim and/or porch railings, columns or posts shall have the appearance of light frame wood construction.~~

~~(7) Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts, and other decorative elements). Trim finishes shall be of a contrasting lighter color than that of the primary building color with the exception of white as a primary building color.~~

~~(8) There shall be no area greater than 400 square feet of contiguous blank wall area on any front facade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.~~

~~(9) There shall not be any singular facade that has greater than 100 lineal feet of run without a minimum 16" break, by using a directional or material change.~~

~~(10) Metal-clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external "X" bracing is to be visible on any front facade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal-clad structures as for any other new structure.~~

(B >>A<<) Structures must adhere to one (1) of the following Architectural Styles for architectural elevations facing public rights-of-way within the NC, CC, HC, RC, and OP zoning districts, and for structures constructed on a lot fronting any arterial or collector roadways in the GC zoning district, located outside of the Bayfront Community Redevelopment District. All structures that are in excess of five thousand (5,000) square feet of area on the main floor shall

provide an area on the site ~~equivalent to five percent (5%)~~ for the purpose of creating an outdoor public space. These areas are inclusive of benches, sitting areas, bicycle racks, display fountains and/or landscaping. ~~Structures in excess of fifty thousand (50,000) square feet of area on the main floor shall provide an area on the site equivalent to three percent (3%) dedicated for an outdoor public space.~~

(1) Florida Vernacular Architectural Style.

* * *

(k) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ of the main floor shall be utilized for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. ~~Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~

(2) Mediterranean/Spanish Colonial.

* * *

(h) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ of the main floor shall be utilized for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.

(3) Spanish Revival.

* * *

(i) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%)~~ of the main floor shall be utilized for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. ~~Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~

(4) Commercial American.

* * *

(j) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%) of the main floor shall be utilized~~ for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. ~~Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~

(5) Bungalow.

* * *

(j) All structures in excess of five thousand (5,000) square feet of area on the main floor shall provide an area on the site ~~equivalent to five percent (5%) of the main floor shall be utilized~~ for the creation of an outdoor public space — these areas are inclusive of benches, sitting areas, bicycle racks, bus stops, display fountains and/or landscaping. ~~Structures that exceed fifty thousand (50,000) square feet of the area on the main floor shall provide an area on the site equivalent to three percent (3%) of the main floor area for an outdoor public space.~~

(G >>B<<) The predominant exterior color shall be applied to all sides of the structure.

(D >>C<<) The design requirements listed in subsections (A) and (B) above shall be applicable to all new construction in the district, and in the case of additions or renovations to, or development of, an existing building or project, where the renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme shall also be exempt from the design requirements herein.

(E >>D<<) The design requirements listed in subsections (A) and (B) above shall be applicable to all accessory buildings also. Any accessory structure not meeting this requirement shall be screened so as to not be visible from the public right-of-way. Mechanical equipment such as gasoline pumps, air and vacuum machines, drive-through menu boards and speaker stations, drive-through teller stations, ATM's, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this subsection. All HVAC, wireless communication devices, Fire Suppression, Solar Panels, wind generation devices and similar equipment placed on any roof or

above the roof line of any commercial structure shall be effectively screened as to not be seen by the public.

(F >>E<<) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review.

(G >>F<<) Structures in the following use categories are exempt from the design review requirements of this subsection: public utility equipment, hospitals, churches, model home centers and buildings having federal, state or locally designated historical status.

(H >>G<<) The Sign Code shall be adhered to with the following exceptions:

* * *

(I >>H<<) Appeals >>Alternative Architectural Styles<<.

(1) The intent of City Council is that commercial structures adhere to the Architectural Style Requirements as described above during the administrative site plan review process for the city. The appeals process described below is intended to provide relief from those provisions only in unusual and unique circumstances. >>This<< S>>s<<ubsection (J) describes an alternative process for Architectural Styles that do not conform to the style requirements of subsections (B >>A<<) through (H >>G<<) above.

(a) Appeals >>Alternative Architectural Styles<<. When an applicant feels that the decision of the City review staff has been made in error with regard to compliance with the Architectural Style Requirements, they may appeal that decision to >>proposes an architectural style that does not conform to subsections (A) through (G) above, the applicant may pursue an Architectural Style Exception through<< the Growth Management Director for a final administrative decision. The appeal >>Exception<< shall be in the form of a letter indicating the reasons for the appeal >>request<< and the applicant's opinion of their adherence to the requirements. In rendering that >>the<< final decision, the Growth Management Director shall take into account the overall level to which the architectural design complies with the requirements. If the applicant is not satisfied with the Final Administrative Decision, they may appeal that decision pursuant to § 59.04(6).

(J >>I<<) Alternative Architectural Styles >>Appeals<<.

(1) Applicants who desire to construct a building in the NC, CC, HC, GC, RC and OP zoning districts located outside of the Bayfront Community

~~Redevelopment District and propose an architectural style that does not conform to subsections (B) through (H) above may opt to pursue an Architectural Style Exception before~~ >>appeal the decision of the Growth Management Director, shall file a written appeal to<< the Palm Bay City Council pursuant to this subsection.

(2) The City Council shall hold a minimum of one (1) public hearing in accordance with Chapter 59 to consider the ~~requested Exception~~ >>appeal<<. The decision of Council shall be based upon the following:

- ~~(a) The quality of the architectural plans.~~
- ~~(b) The quality of the site plans.~~
- (c >>a<<) The level to which the plans exceed the minimum requirements of the Palm Bay Code of Ordinances.
- (d >>b<<) The economic ~~or quality of life benefits expected to be received~~ >>impact to the local tax base of the City<<.
- (e >>c<<) The impact of the project on other properties within the City.
- ~~(f) The architectural and site features described in subsection (J)(3) below.~~
- (g >>d<<) Adherence to corporate branding.

The City Council's decision shall be considered the final City action on the matter.

(3) Prior to the public hearing required above, city staff shall prepare a report to Council that describes how the submitted site and architectural plans ~~address the following issues:~~ >>adhere to the Code, the requested Exception, and the justification for the Final Administrative Decision.<<

- ~~(a) Provisions for public gathering space including benches, tables, fountains, shade and weather coverings, landscaping treatments and similar features.~~
- ~~(b) Scale in reference to nearby structures.~~
- ~~(c) Exposure of roof-top or other equipment on the site.~~
- ~~(d) Proposed color palette.~~
- ~~(e) The extent to which the structure provides variation in roof lines.~~

~~(f) — The extent to which the structure provides variation along the facade.~~

~~(g) — The extent to which the site provides landscaping in excess of the minimum standards in the Code of Ordinances and the extent to which the landscaping compliments the building.~~

~~(h) — The extent to which the lighting plan minimizes impact to adjacent properties, accentuates the positive features of the building and site and adherence to all requirements contained in the Code of Ordinances.~~

~~(i) — The extent to which the signage on both the site and the building compliment the style proposed.~~

~~(j) — The extent to which the building materials compliment the proposed architectural style and the extent to which the finish represents a final appearance. Exposed concrete block, prefabricated metal panels, smooth faced concrete panels or block and similar treatments are not considered appropriate.~~

~~(k) — The appropriateness of the roofing material and color for the architectural style proposed.~~

~~(l) — The extent to which the site and building enhance pedestrian and alternate transportation systems such as provisions of transit stops, bicycle racks and onsite walkways.~~

~~(m) — The extent to which the architectural features chosen by the applicant enhance the overall quality of the neighborhood and the city and are appropriately designed for the specific building and site under construction.~~

~~(K) — The City Council may, by resolution, adopt such administrative policies, applications, manuals and/or fees as necessary to implement the design requirements identified above."~~

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022-XX, held on _____, 2022; and read in title only and duly enacted at Meeting 2022-XX, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Applicant: City of Palm Bay
Case: T-55-2021

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-06, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located south of and adjacent to Arabia Road, in the vicinity west of Cleaves Street, from Recreation and Open Space Use to Single Family Residential Use (1.46 acres) (Case CP-19-2021, Steffany and Victor Lopez), only one reading required.

Ms. Steffany Lopez and Mr. Victor Lopez have submitted for a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 1.46 acres of land from Recreation and Open Space Use to Single Family Residential Use. The undeveloped land is located south of and adjacent to Arabia Road SE.

The applicant has stated that the desired Single-Family Residential land use is needed to allow homes to be built on the property. The proposed land use has a maximum residential density range of 0 to 5 units per acre. The land use request is consistent with the property's existing RS-2, Single Family Residential zoning designation. The property is not within any of the Florida scrub-jay polygons identified in the City's Habitat Conservation Plan (HCP), and no other protected species are known to inhabit the site. Impacts are not anticipated on the adjacent roadways and the City's Stormwater Management Ordinance must be met.

It should be noted that the parcel may only be split one time (to create two properties) without having to follow the City's subdivision ordinance. Any further splits must comply with the minor subdivision administrative review process.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CP-19-2021, subject to the staff comments.

Planning and Zoning Board Recommendation:

Unanimous approval of the request, subject to the staff comments.

ATTACHMENTS:**Description**

Case CP-19-2021 - Staff Report - Revised

Case CP-19-2021 - Plat

Case CP-19-2021 - Parcel

Case CP-19-2021 - Application

Case CP-19-2021 - Correspondence

Case CP-19-2021 - Board Minutes

Ordinance 2022-06



REVISED

STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

CP-19-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

PROPERTY OWNER & APPLICANT

Steffany Lopez

PROPERTY LOCATION/ADDRESS

The property is located south of and adjacent to Arabia Road SE, in Port Malabar Unit 12

SUMMARY OF REQUEST

The applicant is requesting a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 1.46 acres of land from Recreation and Open Space Use to Single Family Residential Use.

Existing Zoning

RS-2, Single-Family Residential

Existing Land Use

Recreation and Open Space Use

Site Improvements

Undeveloped Land

Site Acreage

1.46 acres

SURROUNDING ZONING & USE OF LAND

North

RS-2, Single-Family Residential; Arabia Road SE

East

RS-2, Single-Family Residential; Single-Family Homes

South

RS-2, Single-Family Residential; Single-Family Homes

West

RS-2, Single-Family Residential; Undeveloped Land

BACKGROUND:

The property is located south of and adjacent to Arabia Road SE. Specifically, the subject property is Tract A.01 of Port Malabar Unit 12, located in Section 7, Township 29 south, Range 37 east, Brevard County, Florida. The Tract is approximately 1.46 acres of undeveloped land.

The applicant is requesting a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change the above-described property from Recreation and Open Space Use to Single Family Residential Use. The applicant is Steffany Lopez.

ANALYSIS:

Per Chapter 183: Comprehensive Plan Regulations; Section 183.01(B), the purpose and intent of the Comprehensive Plan is to encourage the most appropriate use of land and resources to promote the health, safety, and welfare of the community.

1. FUTURE LAND USE ELEMENT

The Comprehensive Plan (CP) FLU Element Goal FLU-1 is to “Ensure a high quality, diversified living environment through the efficient distribution of compatible land uses.”

CP Goal FLU-2 is to “Provide for and maintain viable neighborhoods and residential development to meet the existing and future needs of the residents of Palm Bay.”

The applicant stated that the desired future land use is needed to allow for homes to be built upon the property. The Single Family Residential (SFR) Use FLU category allows for a maximum residential density of 5 units per acre, with a range of 0-5 units per acre. Typical uses permitted include single-family homes, recreational uses, and institutional uses such as schools, churches, and utilities.

It shall be noted that the parcel may only be split one time (to create two properties) without having to follow the City’s subdivision ordinance. Any further splits will require compliance and administrative review for a minor subdivision (184.34). The land is currently zoned RS-2, Single-Family Residential and the requested FLU category is consistent with this zoning.

2. CONSERVATION ELEMENT

The environmental character of the city is maintained through conservation, appropriate use, and protection of natural resources. The parcel is not located within any of the Florida scrub jay polygons identified on the City’s Habitat Conservation Plan (HCP). No additional listed species are known to inhabit the subject property. However, any listed species identified on the subject parcel would need to be mitigated for, as required by State and Federal regulations, and per Comprehensive Plan Policy CON-1.7B. This will be vetted through the administrative site plan review process.

Coastal Management: The property is not located within the Coastal High Hazard Area.

3. HOUSING ELEMENT

The proposed ~~Mixed Use~~ >>Single-Family Residential Use<< FLU amendment does not adversely impact the supply and variety of safe, decent, attractive, and affordable housing within the city. The amendment will allow the site to be used for additional housing.

4. INFRASTRUCTURE ELEMENT

The City evaluates present and future water, sewer, drainage, and solid waste, and assesses the ability of infrastructure needed to support development.

Utilities: The FLU amendment will not cause level of service (LOS) to fall below the standards adopted in the Comprehensive Plan for these services for the current planning period. The property currently has city water available to it, but not sewer. Connection to city sewer would be determined upon submission of a minor subdivision application if the property were to be split more than one time.

Drainage: Any development of the site shall meet all criteria of the City's Stormwater Management Ordinance (Chapter 174) and all criteria of Rule 62-330 of the Florida Administrative Code. Compliance with these provisions will be reviewed and enforced during the building permit review process (if just 2 homes) and/or the subdivision process.

Solid Waste: Solid waste collection is provided to the area by Republic Services, Inc. Sufficient capacity exists within the Brevard County landfills to service the property.

5. INTERGOVERNMENTAL COORDINATION ELEMENT

Public Schools: Based on the relatively small size of this parcel, the FLU amendment requested will have no adverse effects on the public school system.

6. RECREATION AND OPEN SPACE ELEMENT

The Recreation and Open Space Element addresses the current and future recreational needs of the city. Single-Family Residential Use does have more of a demand upon the parks & recreation level of service (LOS) standards than Recreation and Open Space Use. However, the number of homes that could be constructed upon the property would have a De minimis effect on the recreation LOS.

7. TRANSPORTATION ELEMENT

The objectives of the Transportation Element are to provide a safe, balanced, efficient transportation system that maintains roadway LOS and adequately serves the needs of the

community. The adjacent roadway segments must meet a LOS C, per the City's adopted Comprehensive Plan. The latest FDOT 2020 Quality and Level of Service Handbook, with the Generalized Annual Average Daily volume for urbanized areas, will be used for the analysis if the applicant submits for minor subdivision approval. However, no impacts to adjacent roadways are anticipated.

8. PROPERTY RIGHTS ELEMENT

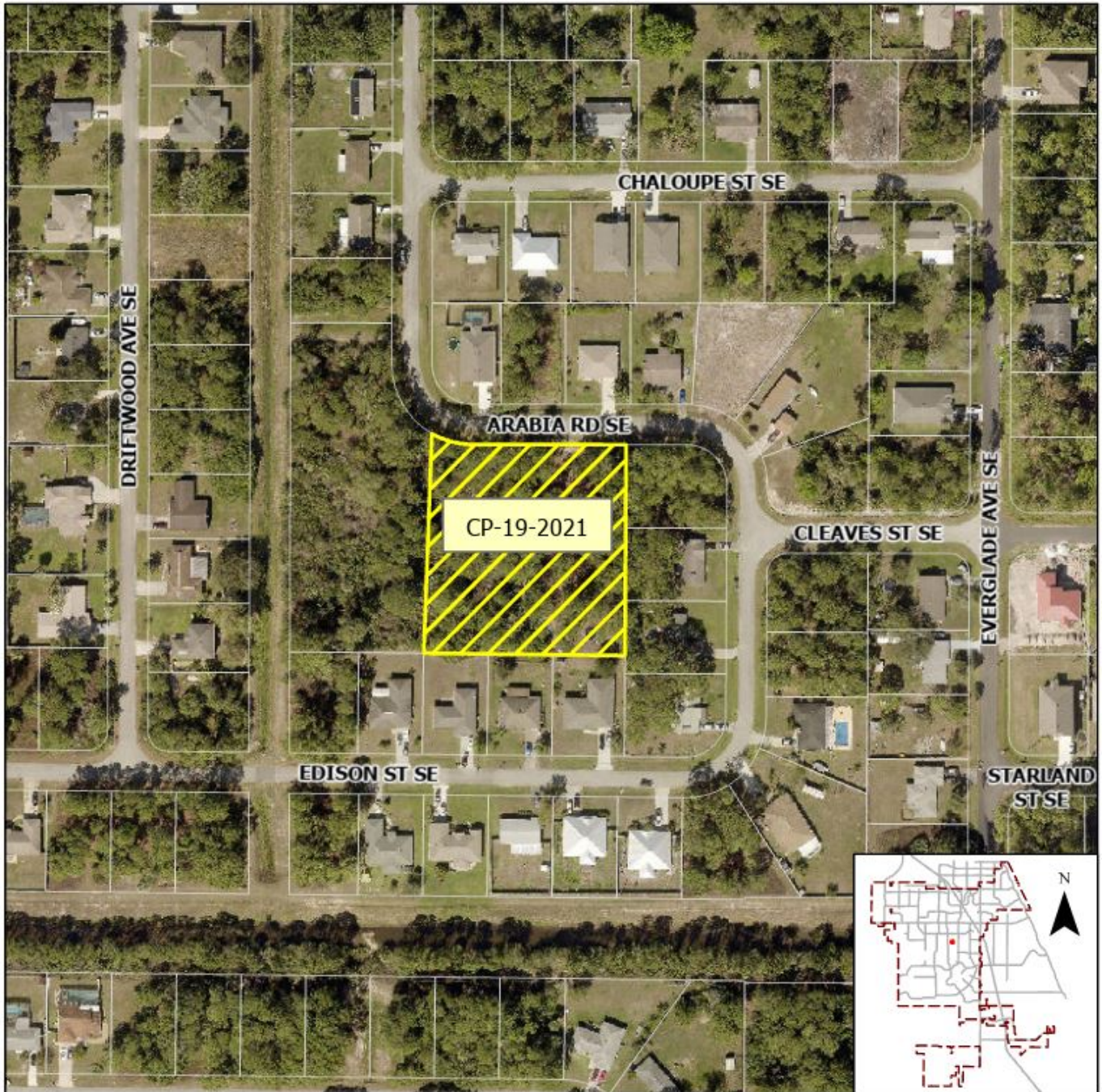
The goal of the Comprehensive Plan's Property Rights Element is for the City to respect judicially acknowledged and constitutionally protected private property rights. This proposed land use change does not appear to infringe upon the property rights of the applicant.

STAFF RECOMMENDATION:

Case CP-19-2021 is recommended for approval subject to the staff comments.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



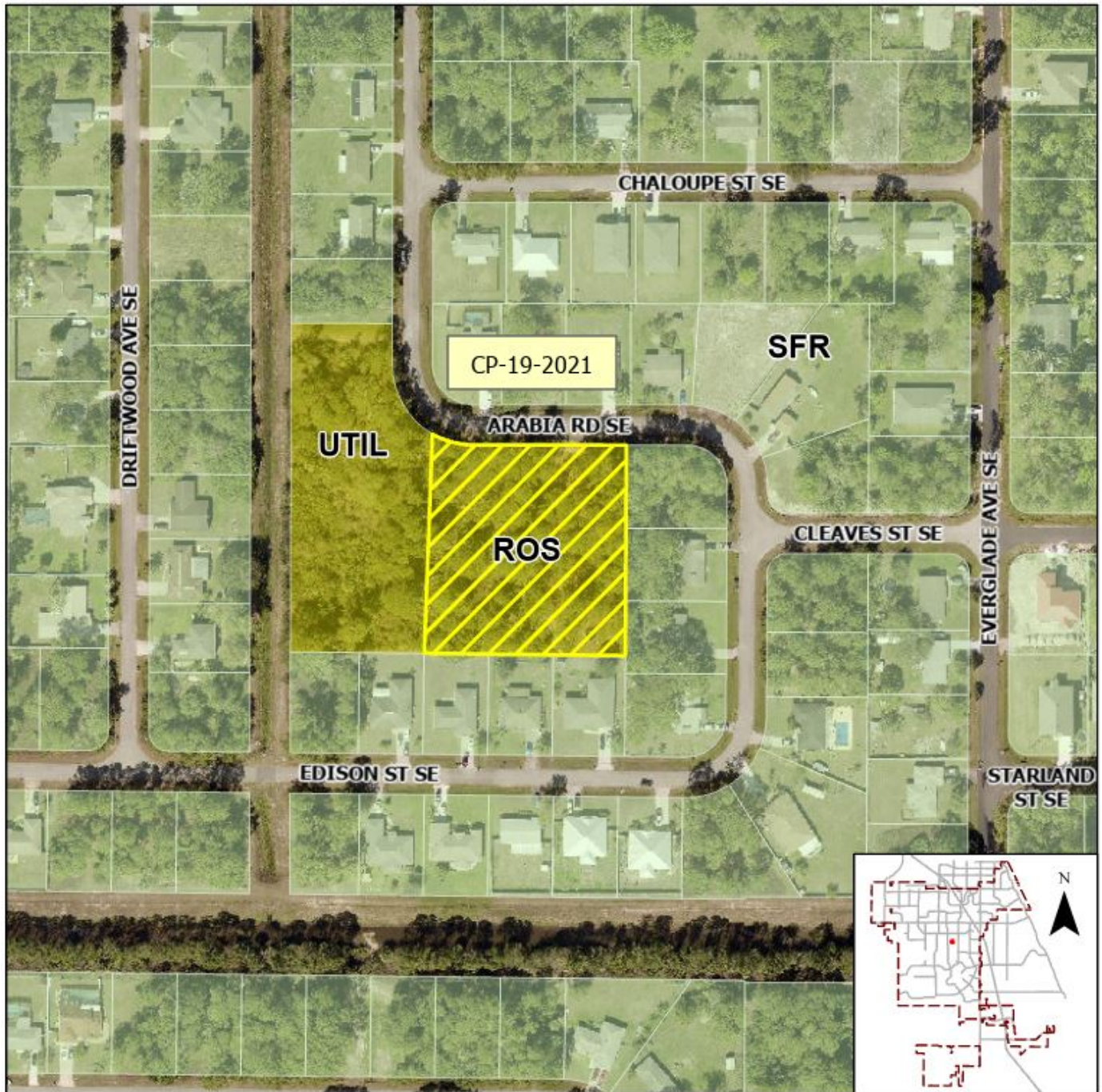
AERIAL LOCATION MAP CASE: CP-19-2021

Subject Property

South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE: CP-19-2021

Subject Property

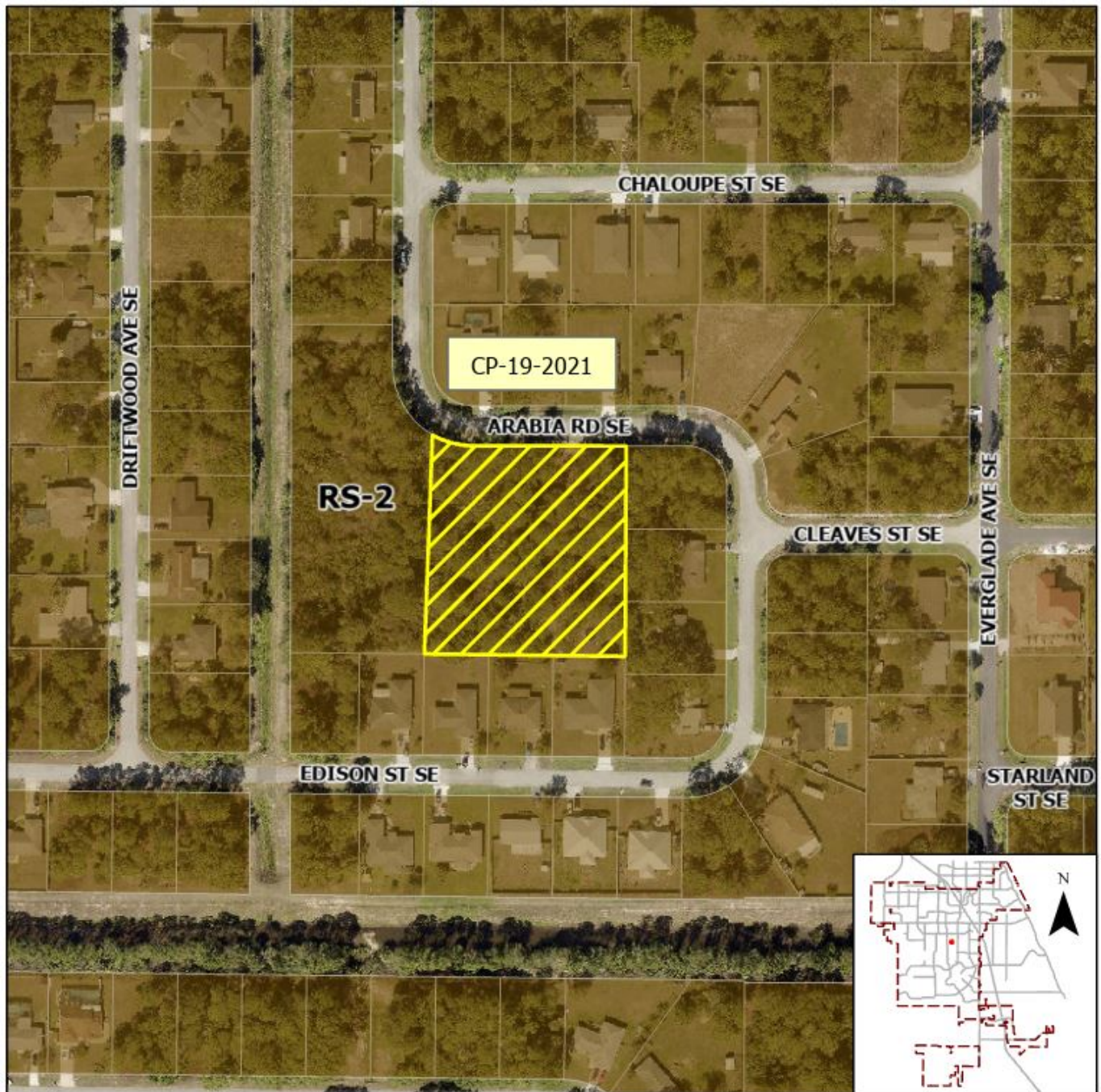
South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE

Future Land Use Classification

ROS – Recreation and Open Space Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: CP-19-2021

Subject Property

South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE

Current Zoning Classification

RS-2 – Single Family Residential District

PORT MALABAR

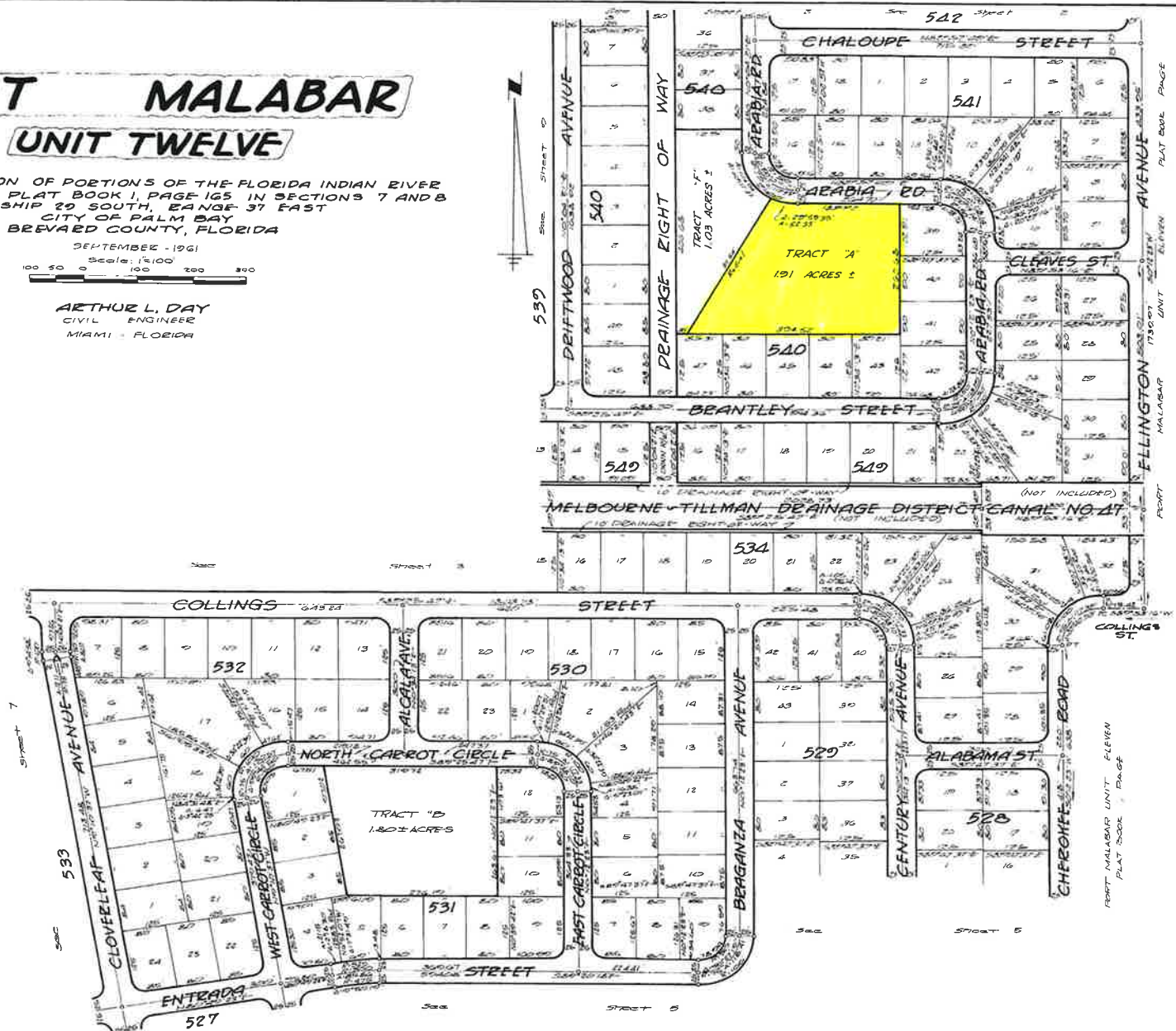
UNIT TWELVE

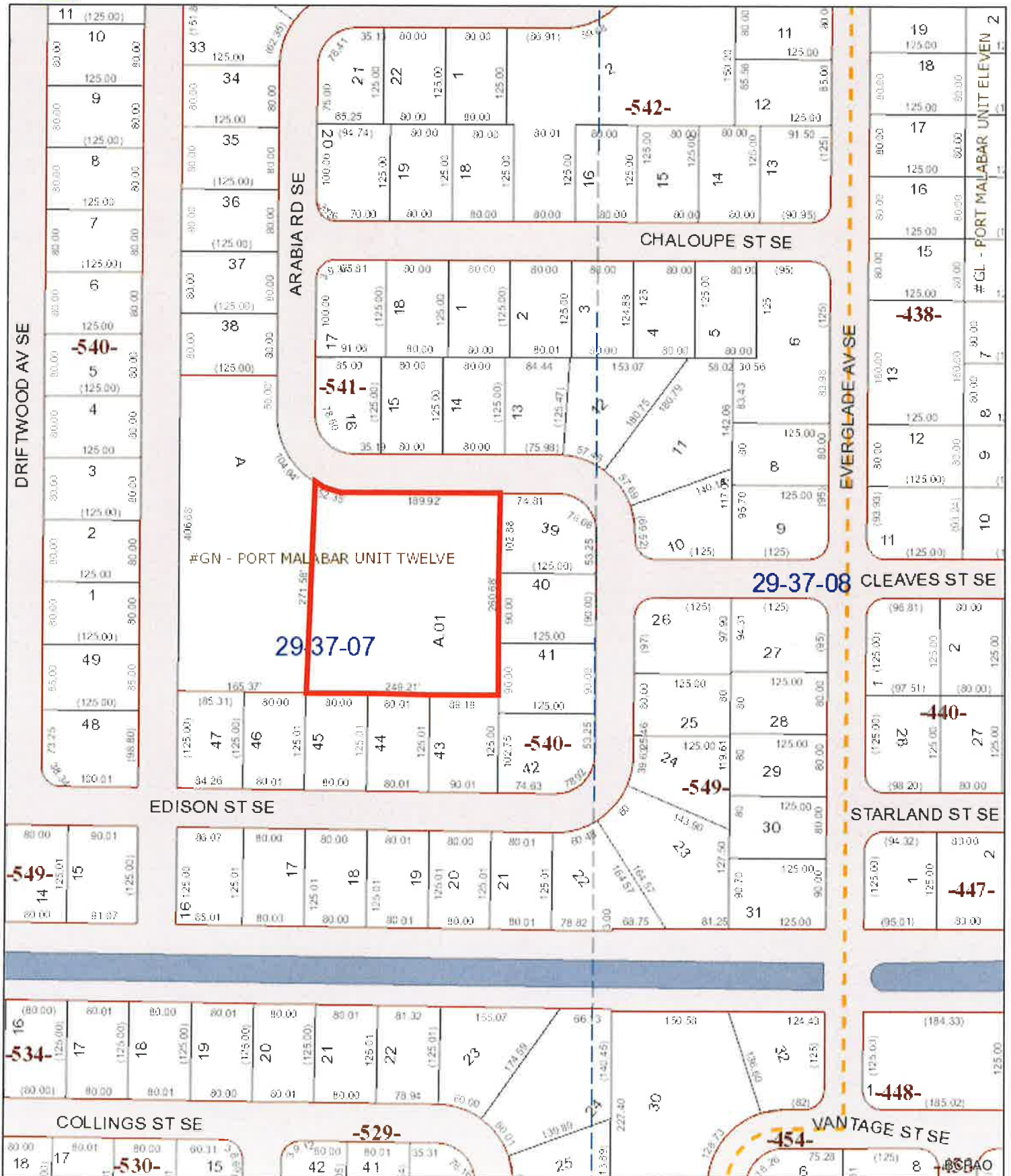
A RESUBDIVISION OF PORTIONS OF THE FLORIDA INDIAN RIVER
LAND COMPANY, PLAT BOOK 1, PAGE 165, IN SECTIONS 7 AND 8
TOWNSHIP 29 SOUTH, RANGE 37 EAST
CITY OF PALM BAY
BREVARD COUNTY, FLORIDA

SEPTEMBER - 1961

Scale: 1"=100'

ARTHUR L. DAY
CIVIL ENGINEER
MIAMI - FLORIDA





All BCPAO maps and/or map applications are maintained for assessment and illustrative purposes only and do not represent surveys, plats, or any other legal instrument. Likewise, measurement and location tools are for assessment and illustrative purposes only and do not necessarily reflect real-world conditions. Due to the nature of Geographic Information Systems (GIS) and cadastral mapping, map layers may not precisely align and may not represent precise location, shape, and/or legal boundaries. Only a Florida-licensed surveyor can determine legally-relevant property boundaries, elevation, distance, area, and/or location in Florida.

Map created November 19, 2021 (map data dates may vary)



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopment@palmbayflorida.org

COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

APPLICATION AMENDMENT TYPE:



Small Scale (Less than 10 acres)



Text Amendment (Comp. Plan)



Large Scale (10 acres or more)

PARCEL ID 29-37-07-GN-*-A.01

TAX ACCOUNT NUMBER 3022 374

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

PORT MALABAR Unit 12 PART OF TRACT A AS DESC
in ORB 8881 PG 213

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 1.46

LAND USE CLASSIFICATION AT PRESENT OR PLAN SECTION AFFECTED (ex.: Commercial, Single Family, Policy CIE-1.1B, etc.):

RECREATION OR OPEN SPACE

LAND USE CLASSIFICATION DESIRED OR PROPOSED TEXT CHANGE (attach additional sheets if necessary):

Single family Residential

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 2 OF 3

PRESENT USE OF PROPERTY VACANT Land

STRUCTURES LOCATED ON THE PROPERTY NONE

REZONING FILED IN CONJUNCTION WITH THIS APPLICATION

N/A

JUSTIFICATION FOR CHANGE (attach additional sheets containing supporting documents and evidence if necessary)

TO Build single family home

SPECIFIC USE INTENDED FOR PROPERTY

Build Homes (HOUSES)

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

☒ *Application Fee. Make Check payable to "City of Palm Bay."

☒ \$1,200.00 - Small Scale (Less than 10 acres)

☐ \$2,000.00 - Large Scale (10 acres or more)

☐ \$2,000.00 - Text Amendment (Comp. Plan)

☒ Boundary Survey for land use amendments.

☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)

☒ School Board of Brevard County [School Impact Analysis Application](#) (if applicable).

☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline.

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 3 OF 3

☐ Where the property owner is not the representative for the request, a LETTER must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative _____

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature Steffany Lopez Date 9/21/21
Printed Name Steffany Lopez
Full Address 583 EDISON ST SE PALM BAY FL 32909
Telephone 321-848-4849 Email IamSteffanylopez@gmail.com

*NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY

RECEIVED

OCT 21 2021

City of Palm Bay
LAND DEVELOPMENT


CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 3 OF 3

- ☐ Legal description of the subject property with a sketch of the legal. **Also provide the site sketch on Memory Drive.**
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline. Staff will provide a sign template.
- ☐ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

Name of Representative _____

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature  Date 11/3/21
Printed Name Victor Lopez
Full Address 583 Edison St SE Palm Bay FL 32909
Telephone 321 848 2865 Email VluisLopez24@gmail.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

CASE CP-19-2021

CORRESPONDENCE

City of Palm Bay
120 Malabar Road SE
Palm Bay Florida 32907
ATTN: Planning and Zoning Board

11/23/2021

Good day,
In Reference to Case CP-19-2021

I am a property owner that is within a 500-foot radius of the land in question (see attached letter).

I am opposed to this Comprehensive Plan future land use map amendment from Recreation and Open Space use to Single Family Residential Use.

I will attend the public hearing on December 1, 2021 at 7pm to state my reasons.

Please add my name to speak at the hearing.

Sharon Lopez
821 Arabia Road SE.
Palm Bay FL 32909

As Attached 1



November 9, 2021

NOTICE TO INTERESTED PROPERTY OWNERS*
PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY
CITY COUNCIL
CITY OF PALM BAY, FLORIDA

Refer to Case CP-19-2021:

An application for a Comprehensive Plan amendment has been filed with the Planning and Zoning Board/Local Planning Agency and the City Council. The applicant requests the property described as follows:

Part of Tract A, Port Malabar Unit 12, Section 7, Township 29, Range 37, Brevard County, Florida, containing approximately 1.46 acres. South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE

be granted a small-scale Comprehensive Plan Future Land Use Map amendment from Recreation and Open Space Use to Single Family Residential Use.

The applicant for the request is Steffany and Victor Lopez.

A public hearing will be held by the Planning and Zoning Board/Local Planning Agency on December 1, 2021, and by the City Council on January 6, 2022, both to be held at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida. You may present your views on the matter in person, in writing, or through a representative.

Planning and Zoning Board
City Council
c/o Land Development Division
City of Palm Bay
120 Malabar Road SE
Palm Bay, Florida 32907

*Refers to applicant and property owners within a 500-foot radius.



SECTION 59.03 - NOTICE PROCEDURES FOR AGGRIEVED OR ADVERSELY AFFECTED PERSONS.

(A) Any aggrieved or affected person desiring to become a party in the quasi-judicial proceeding shall provide written notice to the clerk which notice shall, at a minimum, set forth the aggrieved or affected person's name, address, and telephone number, indicate how the aggrieved or affected person qualifies as an aggrieved or affected person and indicate whether the aggrieved or affected person is in favor of or opposed to the requested quasi-judicial action. The filing of notice with the clerk shall serve as notice to the parties of the aggrieved or affected person's intent to appear at the proceeding to testify, present evidence, bring forth witnesses, and cross-examine witnesses. The required notice must be received by the clerk at least five (5) calendar days before the hearing.

(B) The written notice in subsection (A) above, filed with the clerk of a board for a quasi-judicial matter that will procedurally be forwarded to the City Council for consideration shall also serve as the notice for the aggrieved or affected person to appear at the proceeding held by the City Council on the same quasi-judicial matter.

(Ord. 2015-22, passed 5-7-2015)

BE ADVISED: Regardless of whether or not you qualify as an aggrieved or affected person, per the provisions of Section 59.03 of the Palm Bay Code of Ordinances, any person may speak on any item that is scheduled to appear before the Planning and Zoning Board and/or City Council without having to provide written notice to the clerk. You may fill out a speaker comment/oath card provided by the clerk at the night of the meeting and verbally (or in written form) provide any comments you may have to the Board and/or City Council.

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

Ms. Maragh asked if the applicant had agreed to meet staff conditions. Mr. Macfarlane stated his agreement with the staff conditions.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Motion to submit Case CU-53-2021 to City Council for approval, subject to the special requirements and conditions listed in the staff report.

Motion by Mr. Boerema, seconded by Ms. Maragh. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

4. **CP-19-2021 - Steffany and Victor Lopez - A small-scale Comprehensive Plan Future Land Use Map amendment from Recreation and Open Space Use to Single Family Residential Use. Part of Tract A, Port Malabar Unit 12, Section 7, Township 29, Range 37, Brevard County, Florida, containing approximately 1.46 acres. South of and adjacent to Arabia Road SE, in the vicinity west of Cleaves Street SE**

Mr. Murphy presented the staff report for Case CP-19-2021. Staff recommended Case CP-19-2021 for approval.

Ms. Maragh inquired whether the subject property was under contract with the City. Mr. Murphy explained that the subject site was privately owned by the applicant and not a City surplus site.

Ms. Steffany Lopez (applicant) stated that she and her husband had purchased the property approximately a year ago with the belief that a single-family home could be built on the site.

Ms. Maragh asked if the applicant would be selling the property. Ms. Lopez stated that she was unsure at this time but would likely build on half the site and sell the remainder. The initial plan was to build two homes for the family with her mother residing in the second home.

The floor was opened for public comments.

Ms. Sharon Lopez (resident at Arabia Road SE) spoke against the request. She said that Arabia Road was a narrow, winding road with visibility issues at night and no lighting.

Ms. Mary Ann Haenel (resident at Driftwood Avenue SE) spoke against the request. She was concerned about the displacement of wildlife in the area due to recent construction. Park area was needed for the wildlife to survive.

Mr. Terry Haenel (resident at Driftwood Avenue SE) spoke against the request. He commented that the subject proposal was the third attempt to change the property. Park sites should be unavailable for other development, and there was plenty of land in the area to build homes.

Ms. Jacqueline Toure (resident at Arabia Road SE) spoke against the request. She stated that the applicant wanted to rezone a recreational area without a purpose for the site. The infrastructure in the area was not up to par for more housing, and the park site should remain undeveloped.

The floor was closed for public comments, and the correspondence in the file was from Ms. Sharon Lopez in opposition to the request.

Mr. Weinberg clarified for the audience that the subject request was not a rezoning; the property currently had an RS-2, Single Family Residential District zoning designation. Mr. Murphy further explained how the subject site was created by General Development Corporation as a pocket park but was zoned RS-2 with a Recreation and Open Space land use. The site, however, could not be developed residentially without a residential land use designation. He commented on how two homes on 1.46 acres was extremely low in density and would have little impact on the surrounding area.

Motion to submit Case CP-19-2021 to City Council for approval.

Motion by Mr. Boothroyd, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

5. **CP-20-2021 - Bibi and Gurudeo Chand - A small-scale Comprehensive Plan Future Land Use Map amendment from Commercial Use to Multiple-Family Residential Use. Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, Brevard County, Florida, containing approximately 6.52 acres. East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW**

Mr. Balter presented the staff report for Case CP-20-2021. Should the board approve Case CP-20-2021, staff recommended a 15-unit per acre cap as a condition of the approval.

Mr. Boerema questioned why a small 6.52-acre property was permitted 15 units per acre. Mr. Balter explained that 15 units per acre was a maximum consistent with the surrounding area and the companion zoning request.

Ms. Maragh remarked on how the applicant had been unable to sell the commercial property in 18 years, and she asked if the City had done a valuation to determine whether the site was feasible for commercial development. Mr. Balter stated his opinion that the subject site would not be viable for commercial development based on the amount of commercial units that would be needed to offset the cost of running City water and sewer to the site. Developers would also be unlikely to consider a commercial location on a dead-end road with little traffic.

Ms. Bibi Chand (applicant) was present to answer questions.

The floor was opened for public comments.

Mr. Richard Defay (resident at De Leon Court NW) spoke against the request. He was concerned about the possibility of apartments or townhomes on the site. Traffic was a problem during school hours since Krassner Drive was the only access to reach Malabar Road; large turtles lived on the property; and there was no water and sewer in the area for the development. He believed that Krassner Drive needed to be widened to handle more homes.

ORDINANCE 2022-06

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING THE FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has designated the Planning and Zoning Board as its Local Planning Agency and said Local Planning Agency held an adoption hearing on an amendment to the Comprehensive Plan on December 1, 2021, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held an adoption hearing on an amendment to the Comprehensive Plan on January 6, 2022, after public notice, and

WHEREAS, the City Council of the City of Palm Bay desires to adopt said small scale amendment to the Comprehensive Plan of the City of Palm Bay.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Comprehensive Plan of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the change in land use of property from Recreation and Open Space Use to Single Family Residential Use, which property is legally described as follows:

Tract "A.01", Port Malabar Unit 12, as recorded in Plat Book 15, Page 46, of the Public Records of Brevard County, Florida; Section 7, Township 29S, Range 37E; containing 1.46 acres, more or less; and being more particularly described as follows:

SECTION 2. The Future Land Use Map is hereby changed to reflect this amendment.

SECTION 3. All staff report conditions and limitations shall be met and those conditions and limitations shall be made a part of the Comprehensive Plan.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. The provisions within this ordinance shall take effect thirty-one (31) days from the enactment date.

Read in title only and duly enacted at Meeting 2022- , held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

*Only one reading required pursuant to Chapter 163, Florida Statutes.

Reviewed by CAO: _____

Applicant: Steffany and Victor Lopez
Case: CP-19-2021

cc: (date) Brevard County Property Appraiser
Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-07, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located east of and adjacent to Krassner Drive, in the vicinity north of Hayworth Circle, from Commercial Use to Multiple Family Residential Use (6.52 acres) (Case CP-20-2021, Bibi and Gurudeo Chand), only one reading required.

Ms. Bibi Chand and Mr. Gurudeo Chand have submitted for a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 6.52 acres of land from Commercial Use to Multiple Family Residential Use. The undeveloped land is located east of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW.

The applicant has stated that the desired Multiple-Family Residential land use is desired to develop the property in the future as a multi-family project of either townhomes or condominiums. Recent studies have shown that there is a lack of multi-family housing in Palm Bay and that existing multi-family developments have an extremely low vacancy rate that drives this need. The proposed land use has a maximum residential density range of 0 to 20 units per acre. Case CPZ-20-2021 is the companion rezoning request for an RM-15 multi-family residential zoning district that would result in no more than 97 units. The property is not within any of the Florida scrub-jay polygons identified in the City's Habitat Conservation Plan (HCP), and no other protected species are known to inhabit the site. If developed, the owner/developer will be responsible for extending water and sewer service to the site and for providing any needed traffic improvements that is determined by their traffic impact analysis.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CP-20-2021, subject to the following item as a condition of that approval:

- The maximum density shall be capped at 15 units per acre.

Planning and Zoning Board Recommendation:

Denial of the request by a vote of 4 to 2.

ATTACHMENTS:**Description**

Case CP-20-2021 - Staff Report

Case CP-20-2021 - Plat

Case CP-20-2021 - Boundary Survey

Case CP-20-2021 - Application

Case CP-20-2021 - Board Minutes

Ordinance 2022-07



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

CASE NUMBER

CP-20-2021

PLANNING & ZONING BOARD HEARING DATE

December 1, 2021

PROPERTY OWNER & APPLICANT

Bibi and Gurudeo Chand

PROPERTY LOCATION/ADDRESS

Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, of Brevard, County Florida

SUMMARY OF REQUEST

The applicant is requesting a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 6.52 acres of land from Commercial Use to Multiple Family Residential Use.

Existing Zoning

NC, Neighborhood Commercial

Existing Land Use

Commercial Use

Site Improvements

Vacant, undeveloped land

Site Acreage

6.52 acres

SURROUNDING ZONING & USE OF LAND

North

RS-2, Single-Family Residential; Single Family Homes

East

RS-2, Single-Family Residential; Single-Family Homes

South

Krassner Drive NW

West

RS-2, Single-Family Residential; Single Family Homes

BACKGROUND:

The property is located east of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW. Specifically, the subject property is Tract A, of Port Malabar Unit 39, Section 34, Township 28, Range 36. This property is vacant, undeveloped land.

The applicant purchased the property in September of 2003 and is requesting a small-scale Comprehensive Plan Future Land Use Map amendment to change 6.52 acres of land from Commercial Use to Multiple Family Residential Use.

ANALYSIS:

Per Chapter 183: Comprehensive Plan Regulations; Section 183.01(B), the purpose and intent of the Comprehensive Plan is to encourage the most appropriate use of land and resources to promote the health, safety, and welfare of the community.

1. FUTURE LAND USE ELEMENT

Included with the application is a Statement of Justification for Comprehensive Plan Map Amendment. The statement indicates that the applicant desires the property to be developed in the future as a multi-family project of either townhomes or condos.

The Comprehensive Plan (CP) FLU Element Goal FLU-1 is to “Ensure a high quality, diversified living environment through the efficient distribution of compatible land uses.”

CP Goal FLU-2 is to “Provide for and maintain viable neighborhoods and residential development to meet the existing and future needs of the residents of Palm Bay.”

CP Goal FLU-8 is to “Provide a diverse and self-sustaining pattern of land uses which support the present and future population of the City of Palm Bay.”

Recent studies have shown that there is a lack of multi-family housing in Palm Bay and that existing multi-family developments have an extremely low vacancy rate, thus driving this need. This amendment will help to further strike the balance of diversified living environments sought by the above goals.

The Multiple Family Residential (MFR) Use future land use category allows for a maximum residential density of 20 units per acre (UPA), with a range of 0-20 UPA. Typical uses allowed include single-family homes, duplexes, multi-family units, congregate living units, recreational uses, and institutional uses such as schools, churches, and utilities.

This established density limit would yield a maximum of 130 units. However, as indicated in the companion rezoning request (CPZ-20-2021), the applicant is requesting the RM-15 zoning district to be applied to the parcel. Provisions of the RM-15 district only permit a maximum of

15 UPA. This would result in no more than 97 units. A development of this size would be considered medium density residential development; and if approved, this density should be the maximum permitted by this amendment request.

2. CONSERVATION ELEMENT

The environmental character of the City is maintained through conservation, appropriate use, and protection of natural resources.

The parcel is not located within any of the Florida scrub-jay polygons identified on the City's Habitat Conservation Plan (HCP). No additional listed species are known to inhabit the subject property. However, any listed species identified on the subject parcel would need to be mitigated, as required by State and Federal regulations, and per Comprehensive Plan Policy CON-1.7B. This will be vetted through the administrative site plan review process.

Coastal Management: The subject property is not located within the Coastal High Hazard Area.

3. HOUSING ELEMENT

The proposed FLU amendment does not adversely impact the supply and variety of safe, decent, attractive, and affordable housing within the City. The amendment will allow the site to be used for additional housing and allow for a type of housing (multi-family) that is needed throughout Palm Bay.

4. INFRASTRUCTURE ELEMENT

The City evaluates present and future water, sewer, drainage, and solid waste, and assesses the ability of infrastructure needed to support development.

Utilities: The FLU change will not cause the level of service to fall below the standards adopted in the Comprehensive Plan for these services for the current planning period. Public water and sewerage facilities are not readily available at the site. If developed, the owner/developer will be responsible for extending service to the site in accordance with current City regulations.

Drainage: Any development of the site shall meet all criteria of the City's Stormwater Management Ordinance (Chapter 174) and all criteria of Rule 62-330 of the Florida Administrative Code. Compliance with these provisions will be reviewed and enforced during the administrative site plan review process.

Solid Waste: Solid waste collection is provided to the area by Republic Services, Inc. Sufficient capacity exists within the Brevard County landfills to service the property.

5. INTERGOVERNMENTAL COORDINATION ELEMENT

Public Schools: The proposed FLU amendment to Multiple Family Use will add housing units. Some impacts to the public-school system area are anticipated; however, considering the adjacent concurrency service areas, there is sufficient capacity.

6. RECREATION AND OPEN SPACE ELEMENT

The Recreation and Open Space Element addresses the current and future recreational needs of the City. Multiple Family Residential Use does have more of a demand upon the Parks & Recreational level of service (LOS) standards than Single Family Residential Use. However, this Element sets a LOS standard of 2 acres per 1,000 residents. The City maintains public ownership of park-designated lands that far exceed this requirement. Therefore, the density increase would have a De minimis effect on the recreation LOS.

7. TRANSPORTATION ELEMENT

The objectives of the Comprehensive Plan's Transportation Element are to provide a safe, balanced, efficient transportation system that maintains the roadway level of service and adequately serves the needs of the community. If developed, a traffic impact analysis will be required to determine any negative impacts on the existing transportation system along with any suggested improvements, which will be taken under consideration during the Site Plan review/approval process.

8. PROPERTY RIGHTS ELEMENT

The goal of the Comprehensive Plan's Property Rights Element is for the City to respect judicially acknowledged and constitutionally protected private property rights.

This proposed land-use change does not appear to infringe upon the property rights of the applicant.

STAFF CONCLUSION:

The analysis contained in this report should provide the Planning and Zoning Board and City Council with information to determine the need and justification for the change, the effect of the change, and the relationship of the proposed amendment to furthering the purposes of the Comprehensive Plan.

Conditions:

Should the Board and Council approve Case CP-20-2021, then staff recommends the following item to be a condition of that approval:

- The maximum density shall be capped at 15 units per acre.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



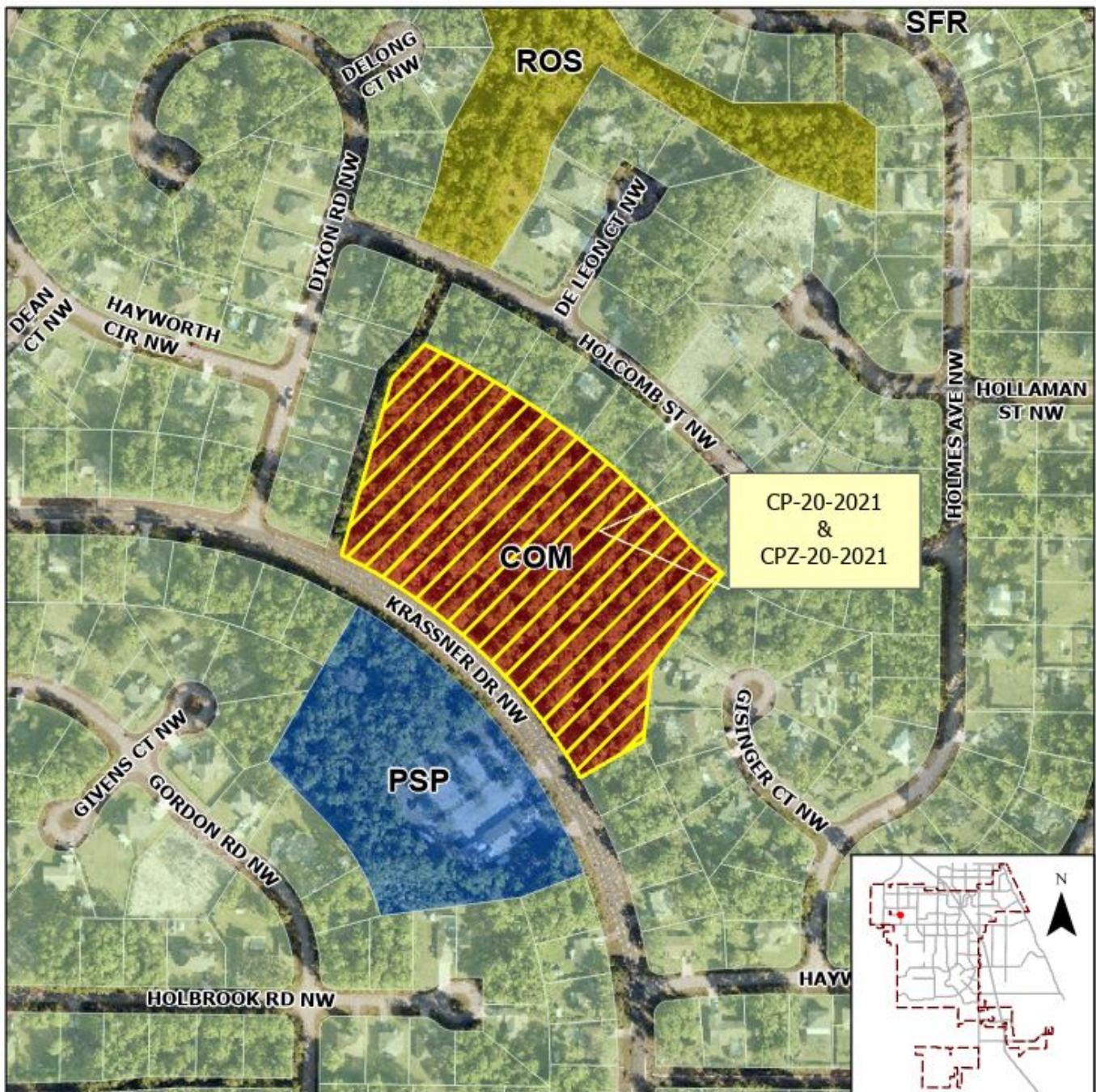
AERIAL LOCATION MAP CASE: CP-20-2021 & CPZ-20-2021

Subject Property

East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP CASE: CP-20-2021 & CPZ-20-2021

Subject Property

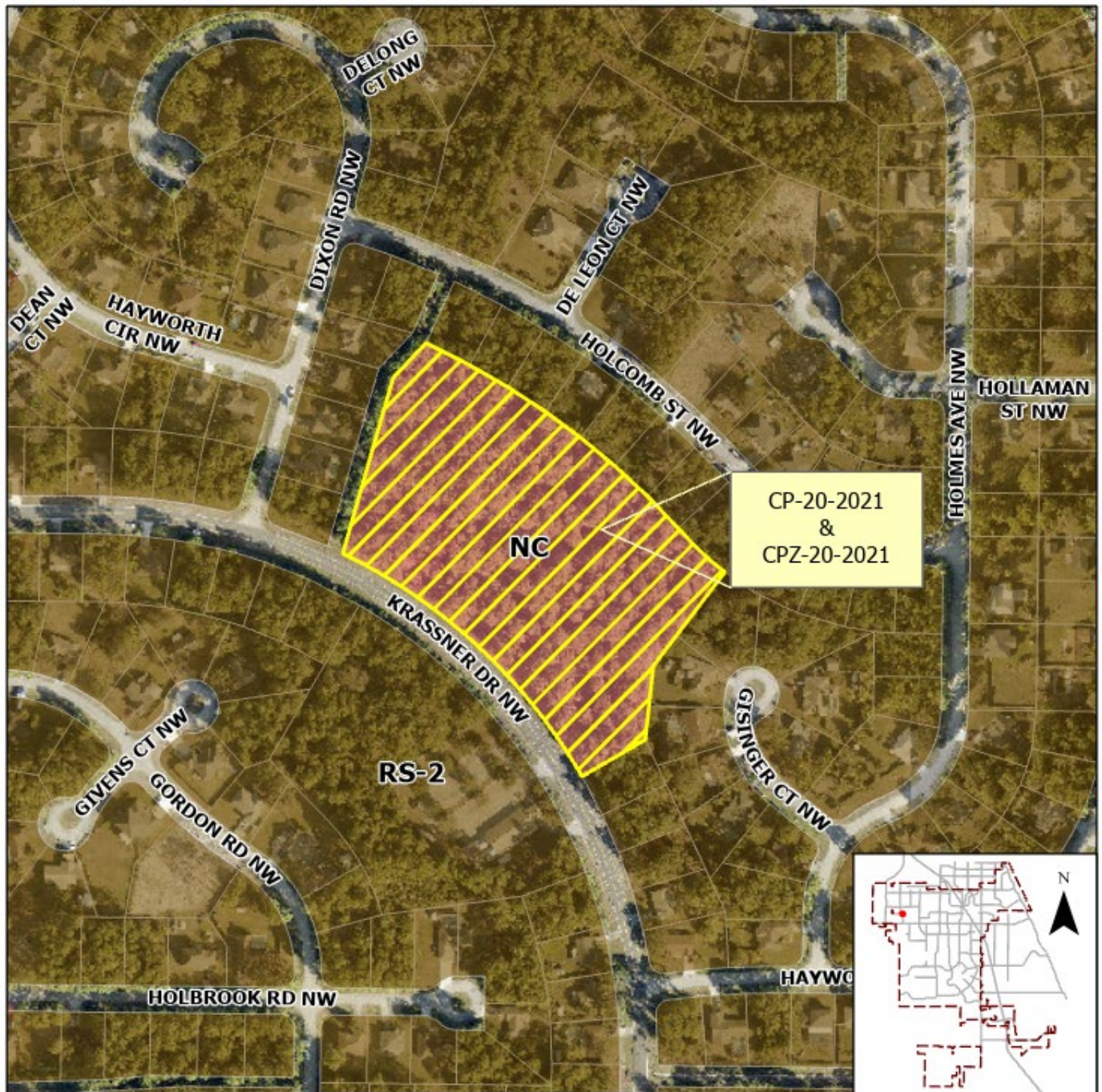
East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW

Future Land Use Classification

COM – Commercial Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: CP-20-2021 & CPZ-20-2021

Subject Property

East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW

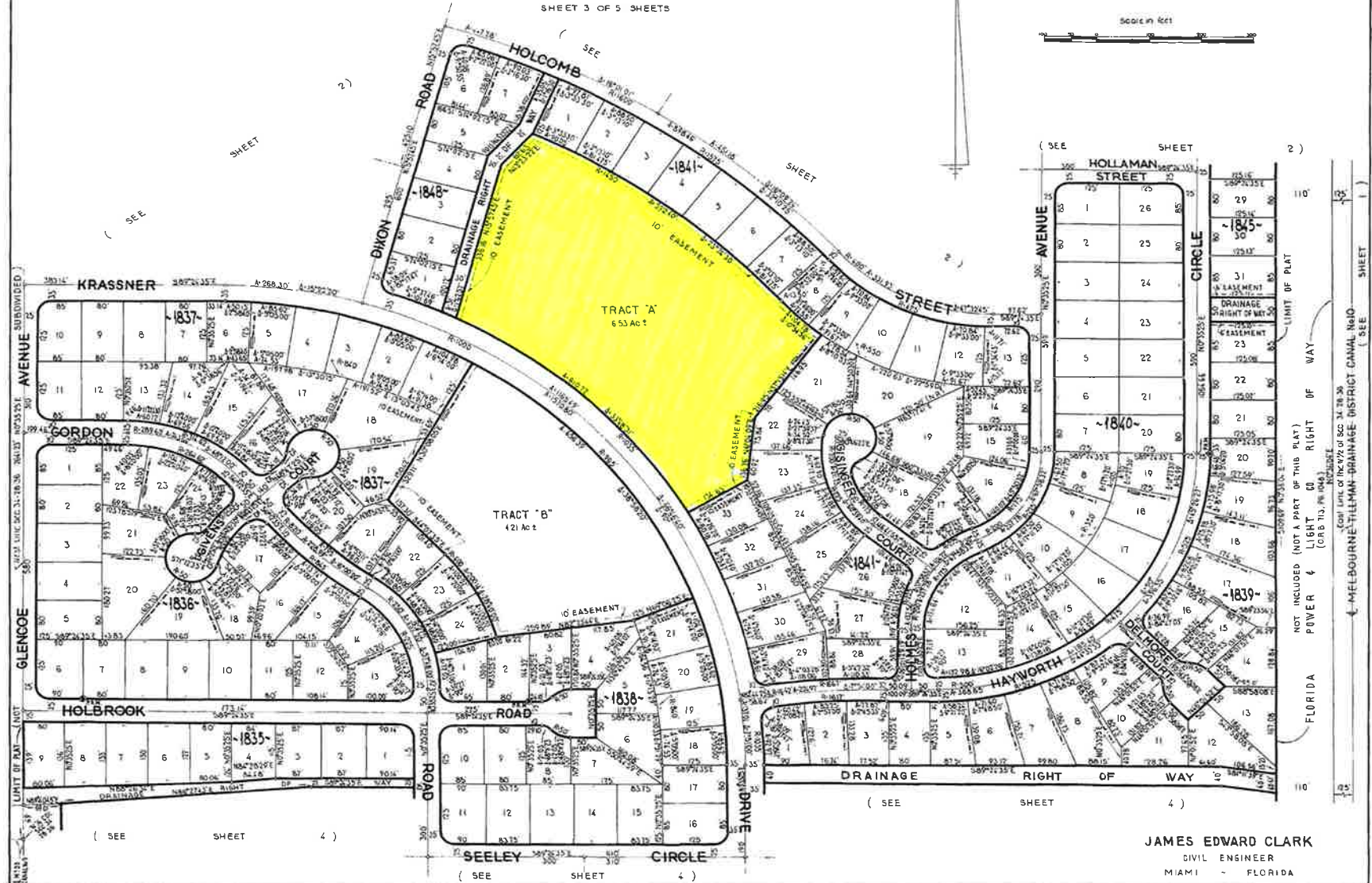
Current Zoning Classification

NC – Neighborhood Commercial District

PORT MALABAR UNIT THIRTY - NINE

A SUBDIVISION OF A PORTION OF SECTION 34
TOWNSHIP 28 SOUTH, RANGE 36 EAST
AND
A RESUBDIVISION OF A PORTION OF PORT MALABAR UNIT TWENTY SIX SIX
CITY OF PALM BAY, BREVARD COUNTY, FLORIDA
SHEET 3 OF 5 SHEETS

PLAT BOOK 21
AND PAGE 26



CALC.
DRAWN
CHECKED
APPROVED



LAND DEVELOPMENT DIVISION
120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
Landdevelopment@palmbayflorida.org

COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

APPLICATION AMENDMENT TYPE:

- ☒ **Small Scale** (Less than 10 acres) ☐ **Text Amendment** (Comp. Plan)
☐ **Large Scale** (10 acres or more)

PARCEL ID 28 3634 25 A

TAX ACCOUNT NUMBER 2813011

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

PORT MALABAR Unit 39 TRACT A

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 6.52 acres

LAND USE CLASSIFICATION AT PRESENT OR PLAN SECTION AFFECTED (ex.: Commercial, Single Family, Policy CIE-1.1B, etc.):

1000 - Vacant Commercial land
com

LAND USE CLASSIFICATION DESIRED OR PROPOSED TEXT CHANGE (attach additional sheets if necessary):

Multifamily for Town Homes or Condos.
MFR
α

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 2 OF 3

PRESENT USE OF PROPERTY Vacant Neighbourhood Commercial
STRUCTURES LOCATED ON THE PROPERTY Trees

REZONING FILED IN CONJUNCTION WITH THIS APPLICATION

yes

JUSTIFICATION FOR CHANGE (attach additional sheets containing supporting documents and evidence if necessary)

We Owned this Property for the Past 18 years paying Commercial FOR Land TAXES. We tried Selling this Property several times. The Response was traffic count is low, No stop sign, Dead end ST, Not Feasible to Pay For Water

SPECIFIC USE INTENDED FOR PROPERTY

Sewer Conversion.

Residential Multi family for Town Homes or Condos. RM 15

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ *Application Fee. Make Check payable to "City of Palm Bay."
- ☒ \$1,200.00 - Small Scale (Less than 10 acres)
- ☐ \$2,000.00 - Large Scale (10 acres or more)
- ☐ \$2,000.00 - Text Amendment (Comp. Plan)
- ☒ Boundary Survey for land use amendments.
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ School Board of Brevard County (if applicable).
- ☐ Sign(s) posted on the subject property. Refer to of the Legislative Code for guideline.

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 3 OF 3

☐ Where the property owner is not the representative for the request, a _____ must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative _____

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature Bibi N Chand Gurudeo Chand Date 10-19-21
Printed Name BIBI N CHAND GURUDEO CHAND
Full Address 6670 NW 101 TERRACE, PARKLAND, FL 33076
Telephone 954 907 0880 Email Gurudeo@comcast.net

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

5. **CP-20-2021 - Bibi and Gurudeo Chand - A small-scale Comprehensive Plan Future Land Use Map amendment from Commercial Use to Multiple-Family Residential Use. Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, Brevard County, Florida, containing approximately 6.52 acres. East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW**

Mr. Balter presented the staff report for Case CP-20-2021. Should the board approve Case CP-20-2021, staff recommended a 15-unit per acre cap as a condition of the approval.

Mr. Boerema questioned why a small 6.52-acre property was permitted 15 units per acre. Mr. Balter explained that 15 units per acre was a maximum consistent with the surrounding area and the companion zoning request.

Ms. Maragh remarked on how the applicant had been unable to sell the commercial property in 18 years, and she asked if the City had done a valuation to determine whether the site was feasible for commercial development. Mr. Balter stated his opinion that the subject site would not be viable for commercial development based on the amount of commercial units that would be needed to offset the cost of running City water and sewer to the site. Developers would also be unlikely to consider a commercial location on a dead-end road with little traffic.

Ms. Bibi Chand (applicant) was present to answer questions.

The floor was opened for public comments.

Mr. Richard Defay (resident at De Leon Court NW) spoke against the request. He was concerned about the possibility of apartments or townhomes on the site. Traffic was a problem during school hours since Krassner Drive was the only access to reach Malabar Road; large turtles lived on the property; and there was no water and sewer in the area for the development. He believed that Krassner Drive needed to be widened to handle more homes.

Mr. James Kratzer (resident at Redbud Circle NW) spoke against the request. He was concerned that the land use change would allow apartments on the site in the future. Extending water and sewer to the property could legally force an undue burden of requiring existing homes with failed septic systems to connect into the lines. The multiple-family development could also lower the property values of the single-family neighborhood.

Mr. Charles Byers (resident at Dixon Road NW) spoke against the request. He remarked on how an existing utility/drainage corridor along the back of Krassner Drive would be blocked by the proposed development; neighborhood homes would be impacted by lighting pollution; and there were endangered turtles on the site. He commented on how a traffic signal on Krassner Drive might be necessary to support a multiple-family project. Possible drainage onto his property from a paved parking lot at the proposed development was also a concern.

Mr. Christian Iezzi (resident at Redbud Circle NW) spoke against the request. He stated that the subject area was an ecological site. He was concerned about tearing up new roads to install sewer lines; the privacy from multi-story units overlooking the existing neighborhood homes; and congestion. He stated that the City should work with the property owners to make the site a saleable commercial property.

Ms. Danielle Cooper (resident at Redbud Circle NW) spoke against the request. She stated that the property was on a sharp corner that could result in accidents. The loss of privacy and the impact on the existing morning traffic were concerns. The applicant should work with City staff for a better project.

Mr. Daniel Young and Ms. Ginny Young (residents at Gisinger Street NW) spoke against the request. There were already multiple-family homes on Malabar Road, so there was not a need for additional multiple-family development in the area.

In response to public comments, Ms. Chand stated that it was not her intention to construct a three or four-story development to disrupt the community, and there were townhomes that had the appearance of single-family homes. She noted that there would likely be less than 97 units on the site due to roads and other infrastructure. Mr. Gurudeo Chand (applicant) reiterated that the property was marketed unsuccessfully for commercial use for 18 years, and although 97 units were allowed,

it was not necessarily desired. Ms. Chand added that a commercial development would be more disruptive to the community.

Ms. Jordan asked if the applicant had considered a single-family development. Mr. Chand indicated that he was open to considering a single-family development. Any development, however, would impact the wildlife on the site.

Ms. Maragh asked if the applicant was trying to sell the property as a multi-family site. Ms. Chand stated that this was correct. Mr. Chand said that any buyer would have to meet all development requirements.

Mr. Balter informed the board that a change in the property use from commercial to multiple-family residential would be a “down use” that would generate less traffic. Any type of development would require water and sewer connections to the site, and the maximum 97 units would be lessened to meet stormwater retention, St. Johns River Water Management District regulations, parking, and infrastructure requirements.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case CP-20-2021 to City Council for approval.

Motion by Mr. Boothroyd, seconded by Mr. Boerema.

Ms. Maragh commented that a future traffic study would also need to be done for the site, and that the multiple-family development could not occur if the requirements could not be met. Mr. Balter indicated that this was correct.

Mr. Hill noted that the motion should include the cap of 15 units per acre. Mr. Boothroyd concurred.

Ms. Maragh remarked on the benefit of a future traffic study, but she was still concerned about a multiple-family development specifically at the subject site. Mr. Weinberg agreed that 97 homes would be too much of an impact on the subject neighborhood in particular. He believed that a single-family development would be a better fit for the area.

Mr. Boothroyd commented that the mix of multiple-family developments with single-family homes was not unusual and could be seen throughout the City and Brevard County. Ms. Maragh stated her support of diverse housing; however, she felt that the subject street was not conducive to multiple-family development.

Mr. Boerema commented on how the property owners should have the ability to develop their site, but there, unfortunately, had been no commercial interest in the property. Mr. Weinberg and Ms. Maragh noted that a lesser residential use, such as single-family homes, could be considered for the site.

Motion amended to submit Case CP-20-2021 to City Council for approval, subject to the staff condition that the maximum density shall be capped at 15 units per acre.

Motion by Mr. Boothroyd, seconded by Mr. Boerema. Motion failed with members voting as follows:

Aye: Boerema, Boothroyd.

Nay: Weinberg, Jordan, Hill, Maragh.

6. ****CPZ-20-2021 - Bibi and Gurudeo Chand - A Zoning amendment from an NC, Neighborhood Commercial District to an RM-15, Single-, Two-, Multiple-Family Residential District. Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, Brevard County, Florida, containing approximately 6.52 acres. East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW**

The board had denied Case CP-20-2021, the companion land use proposal to the subject request.

Ms. Bibi Chand and Mr. Gurudeo Chand (applicants) stated that they had been unable to sell the subject site under the current commercial designation but continued to pay taxes. Based on the denial of Case CP-20-2021, they wanted to know their best option for the property. Mr. Weinberg stated that the applicants should meet with staff to discuss their options.

The floor was opened for public comments.

ORDINANCE 2022-07

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING THE FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has designated the Planning and Zoning Board as its Local Planning Agency and said Local Planning Agency held a public hearing on an amendment to the Comprehensive Plan on December 1, 2021, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held a public hearing on an amendment to the Comprehensive Plan on January 6, 2022, after public notice, and

WHEREAS, the City Council of the City of Palm Bay desires to adopt said small scale amendment to the Comprehensive Plan of the City of Palm Bay.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Comprehensive Plan of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the change in land use of property from Commercial Use to Multiple Family Residential Use, which property is legally described as follows:

Tract "A", Port Malabar Unit 39, according to the plat thereof as recorded in Plat Book 21, Page 26, of the Public Records of Brevard County, Florida; Section 34, Township 28S, Range 36E; containing 6.52 acres, more or less.

SECTION 2. The Future Land Use Map is hereby changed to reflect this amendment.

SECTION 3. All staff report conditions and limitations shall be met and those conditions and limitations shall be made a part of the Comprehensive Plan. Specifically:

A) The maximum density shall be capped at fifteen (15) units per acre.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. The provisions within this ordinance shall take effect thirty-one (31) days from the enactment date.

Read in title only and duly enacted at Meeting 2022- , held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

*Only one reading required pursuant to Chapter 163, Florida Statutes.

Reviewed by CAO: _____

Applicant: Bibi and Gurudeo Chand
Case: CP-20-2021

cc: (date) Brevard County Property Appraiser
Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-08, rezoning property located east of and adjacent to Krassner Drive, in the vicinity north of Hayworth Circle, from NC (Neighborhood Commercial District) to RM-15 (Single-, Two-, and Multiple-Family Residential District) (6.52 acres) (Case CPZ-20-2021, Bibi and Gurudeo Chand), first reading. (Quasi-Judicial Proceeding)

Ms. Bibi Chand and Mr. Gurudeo Chand have submitted a rezoning from the NC, Neighborhood Commercial District, to the RM-15, Single-, Two-, and Multiple-Family Residential District. The vacant property is east of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW.

The applicants have owned and paid taxes on the subject property for the past 18 years. They have stated that they have tried to sell the property many times without success due to low traffic counts, and that it was not feasible for a commercial property of its size to hook into City water and sewer.

The proposed RM-15 designation will allow for a "step-down" transition between the existing neighborhood commercial land and the less intense single-family residential properties to the north, east, and west. Staff believes the rezoning is compatible with the immediate area.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CPZ-20-2021, to be consistent and compatible with the Future Land Use designation of Case CP-20-2021.

Planning and Zoning Board Recommendation:

Denial of the request by a vote of 4 to 2.

ATTACHMENTS:**Description**

Case CPZ-20-2021 - Staff Report - Revised

Case CPZ-20-2021 - Plat

Case CPZ-20-2021 - Boundary Survey

Case CPZ-20-2021 - Application

Case CPZ-20-2021 - Board Minutes

Ordinance 2021-08



REVISED
Report repealed and revised in entirety.

STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Christopher Balter, Senior Planner

<hr/>	
CASE NUMBER	PLANNING & ZONING BOARD HEARING DATE
CPZ-20-2021	December 1, 2021
<hr/>	
PROPERTY OWNER & APPLICANT	PROPERTY LOCATION/ADDRESS
Bibi and Gurudeo Chand	Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, of Brevard County, Florida
<hr/>	
SUMMARY OF REQUEST	The applicant is requesting a rezoning from the NC, Neighborhood Commercial District, to the RM-15, Single-, Two- and Multiple-Family Residential District.
Existing Zoning	NC, Neighborhood Commercial
Existing Land Use	Commercial Use
Site Improvements	Vacant, undeveloped land
Site Acreage	6.52 acres
<hr/>	
SURROUNDING ZONING & USE OF LAND	
North	RS-2, Single-Family Residential; Single Family Homes
East	RS-2, Single-Family Residential; Single-Family Homes
South	Krassner Drive NW
West	RS-2, Single-Family Residential; Single Family Homes
<hr/>	
COMPREHENSIVE PLAN COMPATIBILITY	Yes, subject to Case CP-20-2021
<hr/>	

BACKGROUND:

The property is located east of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW. Specifically, the subject property is Tract A, of Port Malabar Unit 39, Section 34, Township 28, Range 36. This property is vacant, undeveloped land.

The applicant purchased the property in September of 2003 and is requesting a rezoning to change 6.52 acres of land from the NC, Neighborhood Commercial District to the RM-15, Single-, Two- and Multiple-Family Residential Zoning District.

ANALYSIS:

The following analysis is conducted per Chapter 185: Zoning Code, Section 185.201(C), which utilizes four (4) criteria for the evaluation of rezoning amendments:

Criteria 1: The need and justification for the change;

The Applicant has provided the following:

“We have owned the property for the past 18 years, paying taxes for commercial land. We have tried selling the property many times and the response is that the traffic counts are too low, and it is not feasible for a commercial property of that size to hook into City Water and Sewer.”

Criteria 2: The effect of the change, if any, on the particular property and on surrounding properties;

The designation of the RM-15, Single-, Two- and Multiple-Family Residential Zoning District for the subject parcel would be compatible with the surrounding area.

Criteria 3: The amount of undeveloped land in the general area and in the city having the same classification as that requested;

Within a two-mile radius of the property, there are only three (3) parcels of undeveloped multi-family residential land that total 20.53 acres, which is located on Malabar Road SW.

Criteria 4: The relationship of the proposed amendment to the purpose of the city plan for development, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and the plan;

The provisions of the RM-15 zoning district are intended to apply to an area of medium-density residential development with a variety of housing types. Lot sizes and other restrictions are intended to promote medium-density residential development, maintaining an adequate amount of open space for such development.

Rezoning the parcel to RM-15 would provide for a “step-down” effect that transitions zoning designations from the less intense classification of the RS-2 Single Family Residential District to the north, east, and west, to a less intense zoning classification than Neighborhood Commercial District. Therefore, staff believes the rezoning request would be compatible with the immediate area and in keeping the development pattern of the surrounding area.

STAFF RECOMMENDATION:

Staff recommends approval of Case CPZ-20-2021, to be consistent and compatible with the Future Land Use designation of Case CP-20-2021.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



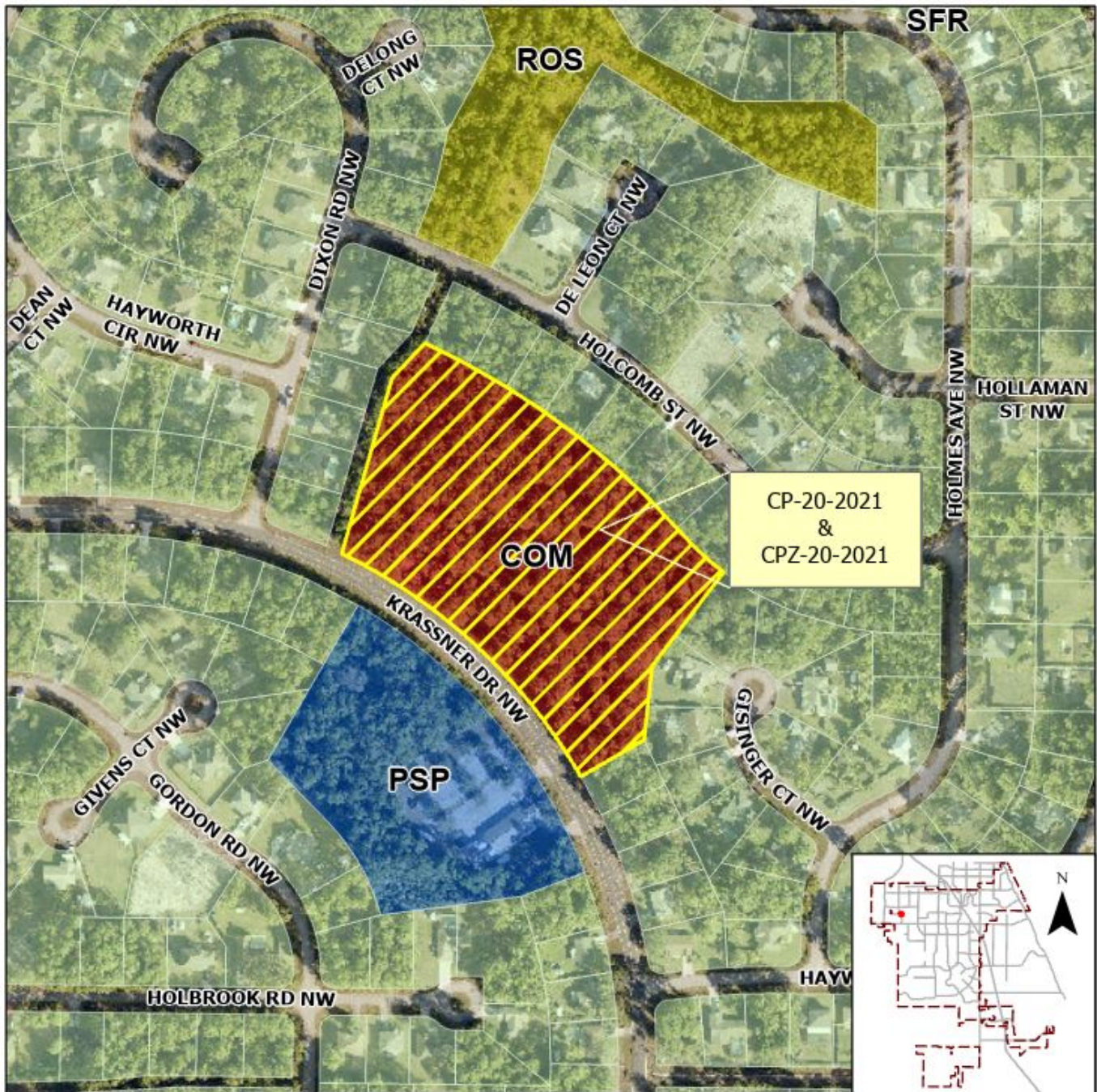
AERIAL LOCATION MAP CASE: CP-20-2021 & CPZ-20-2021

Subject Property

East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE: CP-20-2021 & CPZ-20-2021

Subject Property

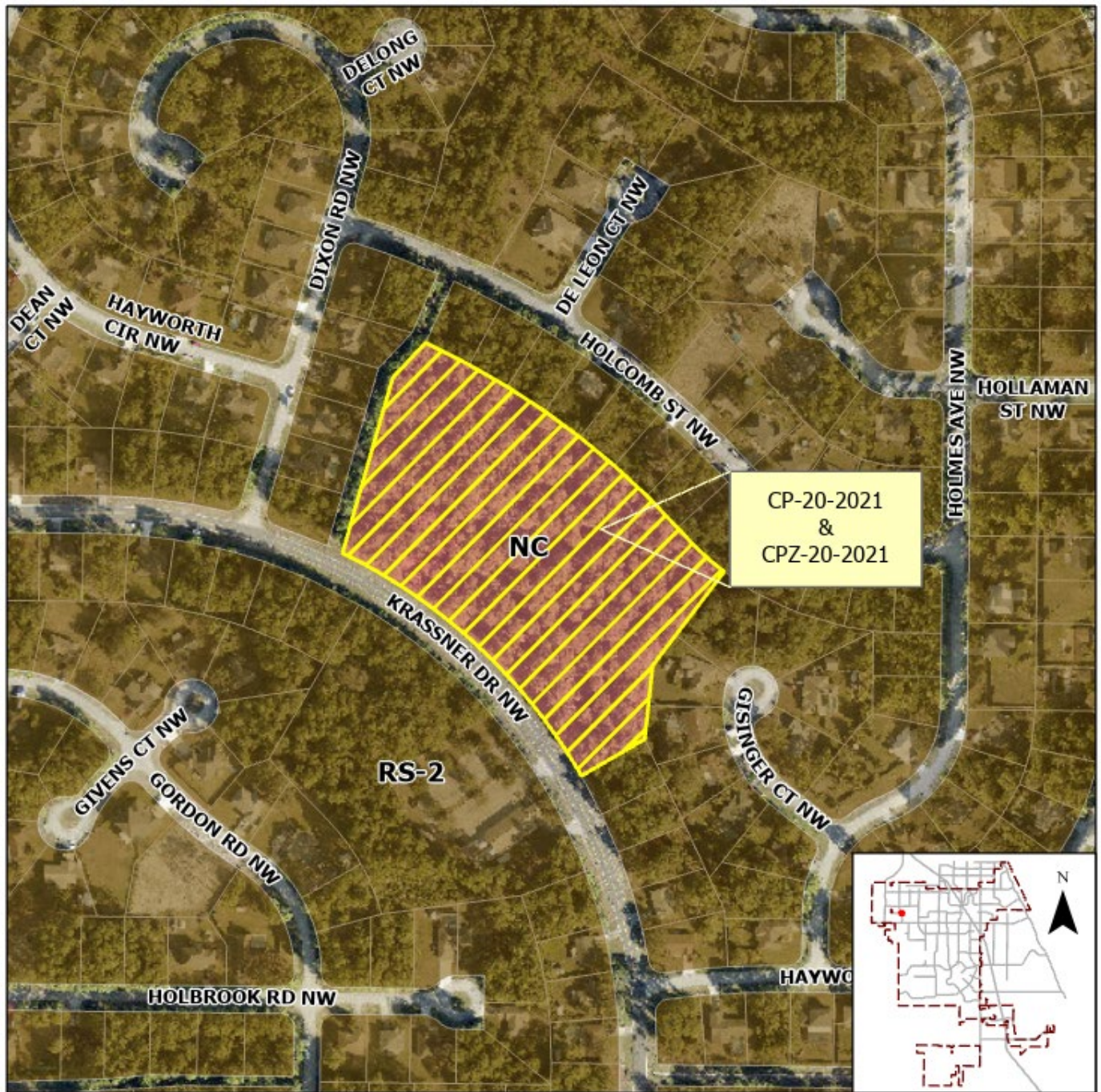
East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW

Future Land Use Classification

COM – Commercial Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE: CP-20-2021 & CPZ-20-2021

Subject Property

East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW

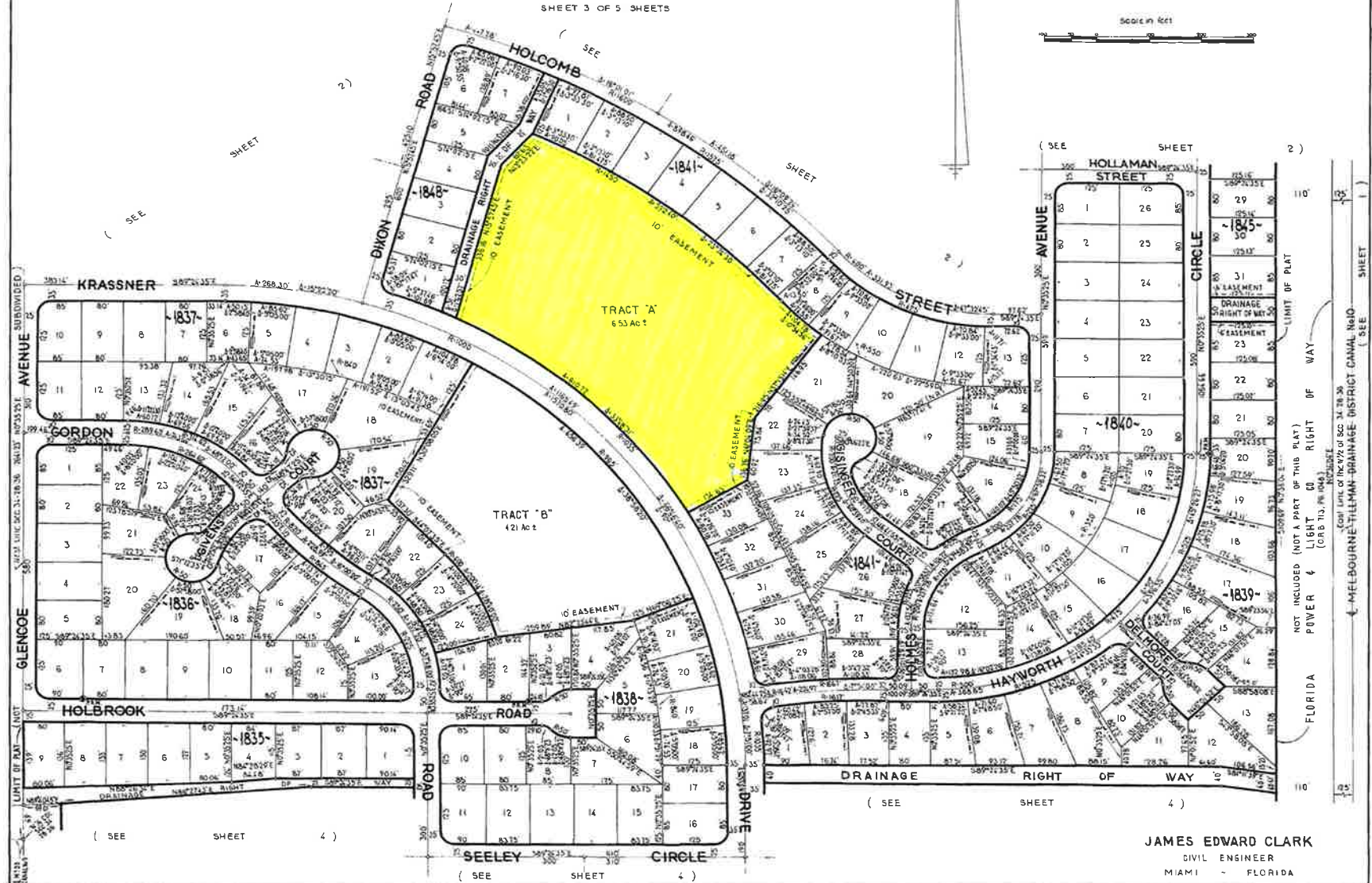
Current Zoning Classification

NC – Neighborhood Commercial District

PORT MALABAR UNIT THIRTY - NINE

A SUBDIVISION OF A PORTION OF SECTION 34
TOWNSHIP 28 SOUTH, RANGE 36 EAST
AND
A RESUBDIVISION OF A PORTION OF PORT MALABAR UNIT TWENTY SIX SIX
CITY OF PALM BAY, BREVARD COUNTY, FLORIDA
SHEET 3 OF 5 SHEETS

PLAT BOOK 21
AND PAGE 26



CALC.
DRAWN
CHECKED
APPROVED



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

REZONING APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID(S):

28 3634 25 A

TAX ACCOUNT NUMBER(S):

2813011

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION: (attach additional sheets if necessary):

PORT MALABAR Unit 39 TRACT A

PROPERTY ADDRESS:

375 Krassner Drive NW, Palm Bay, FL 32907

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):

6.52 Acres

ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.):

Neighborhood Commercial - NC 1000

ZONING CLASSIFICATION DESIRED (ex.: IU, LI, etc.):

CONDOS
TOWN HOMES Multi Family Residential RM-15 units
PR ACRE

STRUCTURES LOCATED ON THE PROPERTY:

NO Building TREES on PROPERTY

PRESENT USE OF THE PROPERTY:

1000 Vacant Commercial Land

INTENDED USE OF THE PROPERTY AND JUSTIFICATION FOR THE CHANGE:

Multi Family Residential RM10 - Town Homes or Condos. We Owned this Property for 18 years, Paying Taxes For Commercial Land. We tried Selling this Property Several times. The Response was Traffic Count Very low, Dead End Street, No Stop sign as such not feasible to Pay for Connection of Sewer & Water. etc

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☒ *A \$650.00 application fee. Make Check payable to "City of Palm Bay."
- ☒ A Boundary Survey or Sketch with legal descriptions of properties covered by this application.
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to _____ of the Legislative Code for guideline. Staff will provide a sign template.
- ☐ Where the property owner is not the representative for the request, a _____ must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative _____

**CITY OF PALM BAY, FLORIDA
REZONING APPLICATION
PAGE 3 OF 3**

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, i declare that i have read the foregoing rezoning application and that the facts stated in it are true.

Owner Signature Bibi N Chaud Gurudeo Chaud Date 10-19-21
Printed Name BIBI N CHAUD Gurudeo Chaud
Full Address 6670 NW 101 TER, PARKLAND, FL 33076
Telephone 954 901 0880 Email GURUDEO@Comcast.net

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

RECEIVED

OCT 28 2021

City of Palm Bay
LAND DEVELOPMENT

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2021-14

Held on Wednesday, December 1, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present
MEMBER:	Rainer Warner	Absent (Excused)
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

Mr. Warner's absence was excused.

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ADOPTION OF MINUTES:

1. **Regular Planning and Zoning Board/Local Planning Agency Meeting 2021-12 November 3, 2021.**

Motion to approve the minutes as presented.

Mr. Boothroyd commented that the mix of multiple-family developments with single-family homes was not unusual and could be seen throughout the City and Brevard County. Ms. Maragh stated her support of diverse housing; however, she felt that the subject street was not conducive to multiple-family development.

Mr. Boerema commented on how the property owners should have the ability to develop their site, but there, unfortunately, had been no commercial interest in the property. Mr. Weinberg and Ms. Maragh noted that a lesser residential use, such as single-family homes, could be considered for the site.

Motion amended to submit Case CP-20-2021 to City Council for approval, subject to the staff condition that the maximum density shall be capped at 15 units per acre.

Motion by Mr. Boothroyd, seconded by Mr. Boerema. Motion failed with members voting as follows:

Aye: Boerema, Boothroyd.

Nay: Weinberg, Jordan, Hill, Maragh.

6. ****CPZ-20-2021 - Bibi and Gurudeo Chand - A Zoning amendment from an NC, Neighborhood Commercial District to an RM-15, Single-, Two-, Multiple-Family Residential District. Tract A, Port Malabar Unit 39, Section 34, Township 28, Range 36, Brevard County, Florida, containing approximately 6.52 acres. East of and adjacent to Krassner Drive NW, in the vicinity north of Hayworth Circle NW**

The board had denied Case CP-20-2021, the companion land use proposal to the subject request.

Ms. Bibi Chand and Mr. Gurudeo Chand (applicants) stated that they had been unable to sell the subject site under the current commercial designation but continued to pay taxes. Based on the denial of Case CP-20-2021, they wanted to know their best option for the property. Mr. Weinberg stated that the applicants should meet with staff to discuss their options.

The floor was opened for public comments.

Mr. James Kratzer (resident at Redbud Circle NW) stated that he would not oppose a resubmittal of the subject property for single-family residential homes.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to deny Case CPZ-20-2021.

Motion by Ms. Jordan, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Hill, Maragh.

Nay: Boerema, Boothroyd.

7. ****Z-54-2021 - Alfred and M. Agarie - A Zoning change from an HC, Highway Commercial District to a BMUV, Bayfront Mixed Use Village District. Tract 11, Hopsons Subdivision, Section 24, Township 28, Range 37, Brevard County, Florida, containing approximately .34 acres. East of and adjacent to Dixie Highway NE, and west of and adjacent to Ridge Road NE, specifically at 4371 Dixie Highway NE**

Mr. Murphy informed the board that the applicant was not in attendance. It was the board's prerogative to hear or continue the case.

At the advisement of Ms. Cockcroft, the floor was opened for public comments. There were no comments from the audience and there was no correspondence in the file. The floor was closed for public comments.

Motion to continue Case Z-54-2021 to the January 5, 2022 Planning and Zoning Board meeting.

Motion by Mr. Boerema, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh.

ORDINANCE 2022-08

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE ZONING ORDINANCE OF THE CITY OF PALM BAY BY CHANGING THE ZONING OF PROPERTY FROM NC (NEIGHBORHOOD COMMERCIAL DISTRICT) TO RM-15 (SINGLE-, TWO-, AND MULTIPLE-FAMILY DISTRICT); WHICH PROPERTY IS LOCATED EAST OF AND ADJACENT TO KRASSNER DRIVE, IN THE VICINITY NORTH OF HAYWORTH CIRCLE, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR A CHANGE OF THE ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Zoning Ordinance of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the rezoning of property from NC (Neighborhood Commercial District) to RM-15 (Single-, Two-, and Multiple-Family District), being legally described as follows:

Tract "A", Port Malabar Unit 39, according to the plat thereof as recorded in Plat Book 21, Page 26, of the Public Records of Brevard County, Florida; Section 34, Township 28S, Range 36E; containing 6.52 acres, more or less.

SECTION 2. The Zoning Map of the City of Palm Bay is hereby revised to reflect this amendment.

SECTION 3. The provisions within this ordinance shall take effect immediately upon the enactment of Ordinance 2021-07.

Read in title only at Meeting 2022- , held on , 2022; and
read in title only and duly enacted at Meeting 2022- , held on , 2022.

ATTEST:

Rob Medina, MAYOR

Terese M. Jones, CITY CLERK



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Ordinance 2022-09, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located at the northwest corner of Jupiter Boulevard and Brevard Avenue, from Single Family Residential Use to Mixed Use (23.86 acres) (Case CP-13-2021, Sachs Capital Group, LP and Identical Investments, LLC), only one reading required.

Mr. Gregory Sachs, Sachs Capital Group, LP and Gerald Lakin, Identical Investments, LLC (Bruce Moia, P.E. and David Bassford, P.E., MBV Engineering, Inc. / Kim Rezanka, Lacey Lyon Rezanka Attorneys at Law, Reps.) have submitted for a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 23.86 acres of land from Single Family Residential Use to Mixed Use. The three parcels are located at the northwest corner of Jupiter Boulevard SE and Brevard Avenue SE. The site was the former location of the Jo Daddy's golf course and parking area.

On April 1, 2021, City Council denied the applicant's request to change the property's future land use designation from Single-family Residential Use to Multiple-family Residential Use and Commercial Use. The applicant is now requesting a land use change to the Mixed Use category. A project specific companion rezoning application has also been submitted for a PUD, Planned Unit Development District (Case PD-48-2021). The PUD will consist of 176 lots for attached townhomes and three (3) commercial lots. At the time of Final Development Plan submittal, the applicant shall provide a Declaration establishing the types of commercial uses. The property is not within any of the Florida scrub-jay polygons identified in the City's Habitat Conservation Plan (HCP), and no other protected species are known to inhabit the site. A traffic impact analysis is required and any deficient LOS segments shall require the project to pay their proportionate fair share cost to bring the roadway segment to LOS C or better.

REQUESTING DEPARTMENT:

Growth Management

RECOMMENDATION:

Motion to approve Case CP-13-2021, subject to the following items as conditions of that approval:

- At the time of development plan submittal, the property owner shall submit a traffic impact analysis and Phase

One Environmental Study;

- The maximum density shall be 176 residential units;
- The maximum commercial development shall be 30,000 gross square feet;
- At the time of development plan submittal, the property owner shall submit a Declaration of Covenants, Conditions, and Restrictions that identifies the development standards.

Planning and Zoning Board Recommendation:

Unanimous approval of the request, subject to the staff conditions contained in the staff report, an additional vegetative buffer on the north and east property lines, and an 8-foot-high fence on the east property line.

ATTACHMENTS:

Description

Case CP-13-2021 - Staff Report - Revised

Case CP-13-2021 - Survey

Case CP-13-2021 - Application

Case CP-13-2021 - Preliminary Development Plan

Case CP-13-2021 - Correspondence

Case CP-13-2021 - Board Minutes

Ordinance 2022-09

**REVISED**

STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

CP-13-2021

PLANNING & ZONING BOARD HEARING DATE

November 15, 2021

PROPERTY OWNER & APPLICANT

Sachs Capital Group, LP (Gregory Sachs, Manager) Represented by Bruce Moia and David Bassford of MBV Engineering, Inc. and Kim Rezanka, Attorney at Law

PROPERTY LOCATION/ADDRESS

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. This property is the former Jo Daddy's Golf Course, at 3255 Jupiter Boulevard SE

SUMMARY OF REQUEST

The applicant is requesting a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change 23.86 acres of land from Single Family Residential Use to **Multiple Family Residential Use (20.91 acres) and Commercial Use (2.95 acres)** >>Mixed Use.<<

Existing Zoning

RR, Rural Residential

Existing Land Use

Single Family Residential Use

Site Improvements

Vacant, Former Golf Course and Associated Parking Lot

Site Acreage

23.86 acres

SURROUNDING ZONING & USE OF LAND**North**

RS-2, Single-Family Residential; Melbourne-Tillman Canal No. 49

East

RS-2, Single-Family Residential; Single-Family Homes

South

RS-2, Single-Family Residential; Single-Family Homes

West

IU, Institutional Use; Jupiter Elementary and Southwest Middle Schools

BACKGROUND:

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. Specifically, the subject property is Tax Parcel 750, 751, and Tract K, Section 6, Township 29 south, Range 37 east, Brevard County, Florida. This property is a former golf course and associated parking area. The three (3) parcels total approximately 23.86 acres of land.

On April 1, 2021 (at RCM 2021-09) City Council voted to deny the applicant's request to change the future land use designation of the subject property from Single-family Residential Use to Multiple-family Residential Use and Commercial Use. A companion rezoning application from RR, Rural Residential to the RM-10, Single-, Two-, and Multi-Family Residential and NC, Neighborhood Commercial zoning districts, were also reviewed. According to the City Attorney, since the land use amendment was denied, the rezoning application was rendered moot.

The applicant is now requesting a small-scale Comprehensive Plan Future Land Use (FLU) Map amendment to change the above-described property from Single Family Residential Use to the Mixed Use FLU category. A project specific companion rezoning application to the PUD, Planned Unit Development district has also been submitted. The Preliminary Development Plan is provided via Case No. PD-48-2021. The applicant is the Sachs Capital Group, LP.

ANALYSIS:

Per Chapter 183: Comprehensive Plan Regulations; Section 183.01(B), the purpose and intent of the Comprehensive Plan is to encourage the most appropriate use of land and resources to promote the health, safety, and welfare of the community.

1. FUTURE LAND USE ELEMENT

The Comprehensive Plan (CP) FLU Element Goal FLU-1 is to "Ensure a high quality, diversified living environment through the efficient distribution of compatible land uses."

CP Goal FLU-2 is to "Provide for and maintain viable neighborhoods and residential development to meet the existing and future needs of the residents of Palm Bay."

CP Goal FLU-8 is to "Provide a diverse and self-sustaining pattern of land uses which support the present and future population of the City of Palm Bay."

The applicant provided the following Statement of Justification for Comprehensive Plan Map Amendment, "current land use does not support the proposed development. In order to be consistent with the proposed development, it is necessary to change the land use."

The Mixed Use (MU) future land use category, as written in Section FLU-1.1I, is as follows:

MIXED USE – Permits a mix of any combination of land use categories. The designation on the Future Land Use Map of a Mixed-Use category shall require adoption of a specific policy or policies identifying the specific mix of uses allowed, the maximum intensity for all non-residential uses and the maximum density for all residential uses permitted on the land area identified. All policies adopted to implement this category shall be included in the adopted Comprehensive Plan and may only be modified by formal amendment of the Plan. This category shall permit both a horizontal mix of use categories and a vertical mix of land use categories as specifically identified in the adopted policy in the implementing any reclassification. The maximum residential density requested cannot exceed 30 units per acre. The maximum floor area ratio for non-residential uses cannot exceed 2.0. The use mix must include at least one non-residential land use category of either commercial or industrial along with at least one other land use category. Residential uses are not required to be included in a mixed-use request.

The specific mix of uses identified on the application are 176 lots for attached townhomes, and three (3) commercial lots. There are no other development standards proposed or maximum density thresholds indicated. Therefore, the specific policy, if the amendment is approved by City Council, would be a maximum residential development not to exceed 176 townhomes. An increase in this number, or a site plan revision to apartments, would require an amendment to the approving ordinance. For commercial development, the PDP states that each of the three buildings will be 10,000 square feet. Thus, the maximum commercial development for the subject property would be 30,000 square feet. At the time of FDP submittal, the applicant shall provide a Declaration establishing the types of commercial uses.

Adjacent land uses include Melbourne-Tillman Canal No. 49 to the north and Jupiter Boulevard (a major collector roadway) to the south. To the west is Jupiter Elementary and Southwest Middle School. Located to the east, across Brevard Avenue, are single-family homes. Approximately 500' west of the property are 3 sites developed under the NC zoning district.

2. CONSERVATION ELEMENT

The environmental character of the city is maintained through conservation, appropriate use, and protection of natural resources. The parcel is not located within any of the Florida scrub jay polygons identified on the City's Habitat Conservation Plan (HCP). No additional listed species are known to inhabit the subject property. However, any listed species identified on the subject parcel would need to be mitigated for, as required by State and Federal regulations, and per Comprehensive Plan Policy CON-1.7B. This will be vetted through the administrative site plan review process.

Coastal Management: The property is not located within the Coastal High Hazard Area.

3. HOUSING ELEMENT

The proposed Mixed Use FLU amendment does not adversely impact the supply and variety of safe, decent, attractive, and affordable housing within the city. The amendment will allow the site to be used for additional housing and allow for a type of housing (multi-family) that is needed throughout Palm Bay. The allowance of commercial uses within the MU FLU category has no effect on the housing element.

4. INFRASTRUCTURE ELEMENT

The City evaluates present and future water, sewer, drainage, and solid waste, and assesses the ability of infrastructure needed to support development.

Utilities: The FLU amendment will not cause level of service (LOS) to fall below the standards adopted in the Comprehensive Plan for these services for the current planning period. The Utilities Department has no objection to the amendment and has reserved their comments for the site-specific design proposed in PD-48-2021.

Drainage: Any development of the site shall meet all criteria of the City's Stormwater Management Ordinance (Chapter 174) and all criteria of Rule 62-330 of the Florida Administrative Code. Compliance with these provisions will be reviewed and enforced during the administrative site plan review process.

Solid Waste: Solid waste collection is provided to the area by Republic Services, Inc. Sufficient capacity exists within the Brevard County landfills to service the property.

5. INTERGOVERNMENTAL COORDINATION ELEMENT

Public Schools: The applicant received a Capacity Determination (CD-2021-04), for 176 residential units, upon submission of the previous amendment application. The CD letter stated there is sufficient capacity in the adjacent concurrency service areas to accommodate this number of units. Therefore, a new Capacity Determination is not warranted. However, a school capacity determination letter (SCADL) will be required for final adoption of the PUD.

6. RECREATION AND OPEN SPACE ELEMENT

The Recreation and Open Space Element addresses the current and future recreational needs of the city. The Mixed Use FLU category does have more of a demand upon the parks & recreational level of service (LOS) standards than Single Family Residential Use as there is a potential increase in residential units. However, this Element sets a LOS Standard of 2 acres per 1,000 residents. The City maintains public ownership of park-designated lands that far exceed this requirement. Therefore, the density increase would have a De minimis effect on the recreation LOS. The allowance of commercial uses within the Mixed Use FLU category has no effect on the recreation and open space element.

7. TRANSPORTATION ELEMENT

The objectives of the Transportation Element are to provide a safe, balanced, efficient transportation system that maintains roadway LOS and adequately serves the needs of the community. The adjacent roadway segments must meet a LOS C, per the City's adopted Comprehensive Plan. The latest FDOT 2020 Quality and Level of Service Handbook, with the Generalized Annual Average Daily volume for urbanized areas, will be used for the analysis. Any deficient LOS segments shall require the project to pay their proportionate fair share cost to bring the roadway segment to LOS C, or better. At the time of site development, a traffic impact analysis will be required.

8. PROPERTY RIGHTS ELEMENT

The goal of the Comprehensive Plan's Property Rights Element is for the City to respect judicially acknowledged and constitutionally protected private property rights. This proposed land use change does not appear to infringe upon the property rights of the applicant.

STAFF CONCLUSION:

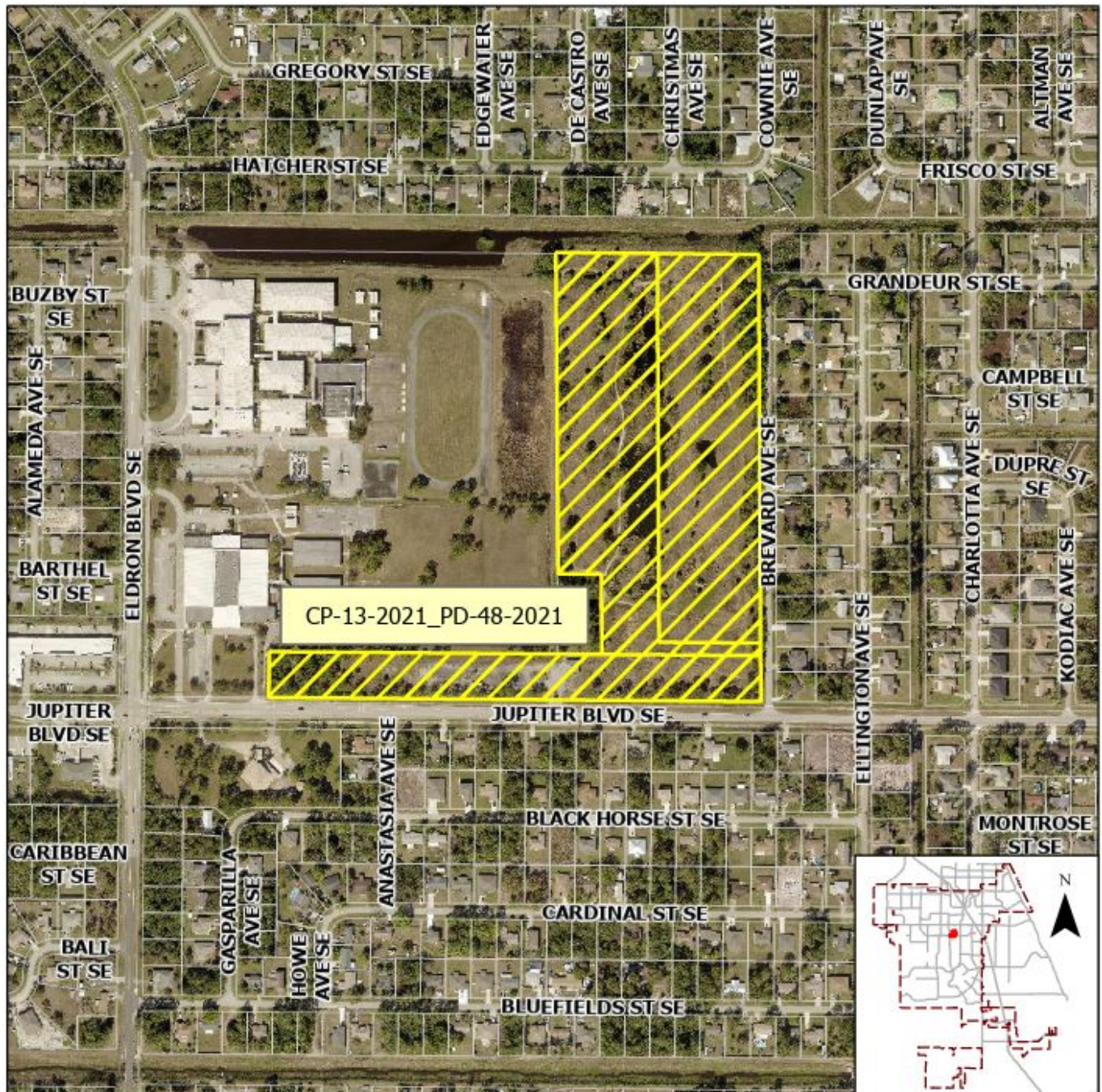
The analysis contained in this report should provide the Planning and Zoning Board and City Council with information to determine the justification for the change and the relationship of the proposed amendment to furthering the purposes of the Comprehensive Plan.

Conditions:

Should the Planning and Zoning Board and City Council approve Case CP-13-2021, staff recommends the following items be conditions of that approval:

- At the time of development plan submittal, the property owner shall submit a traffic impact analysis and Phase One Environmental Study;
- The maximum density shall be 176 residential units;
- The maximum commercial development shall be 30,000 gross square feet;
- At the time of development plan submittal, the property owner shall submit a Declaration of Covenants, Conditions, and Restrictions that identifies the development standards.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



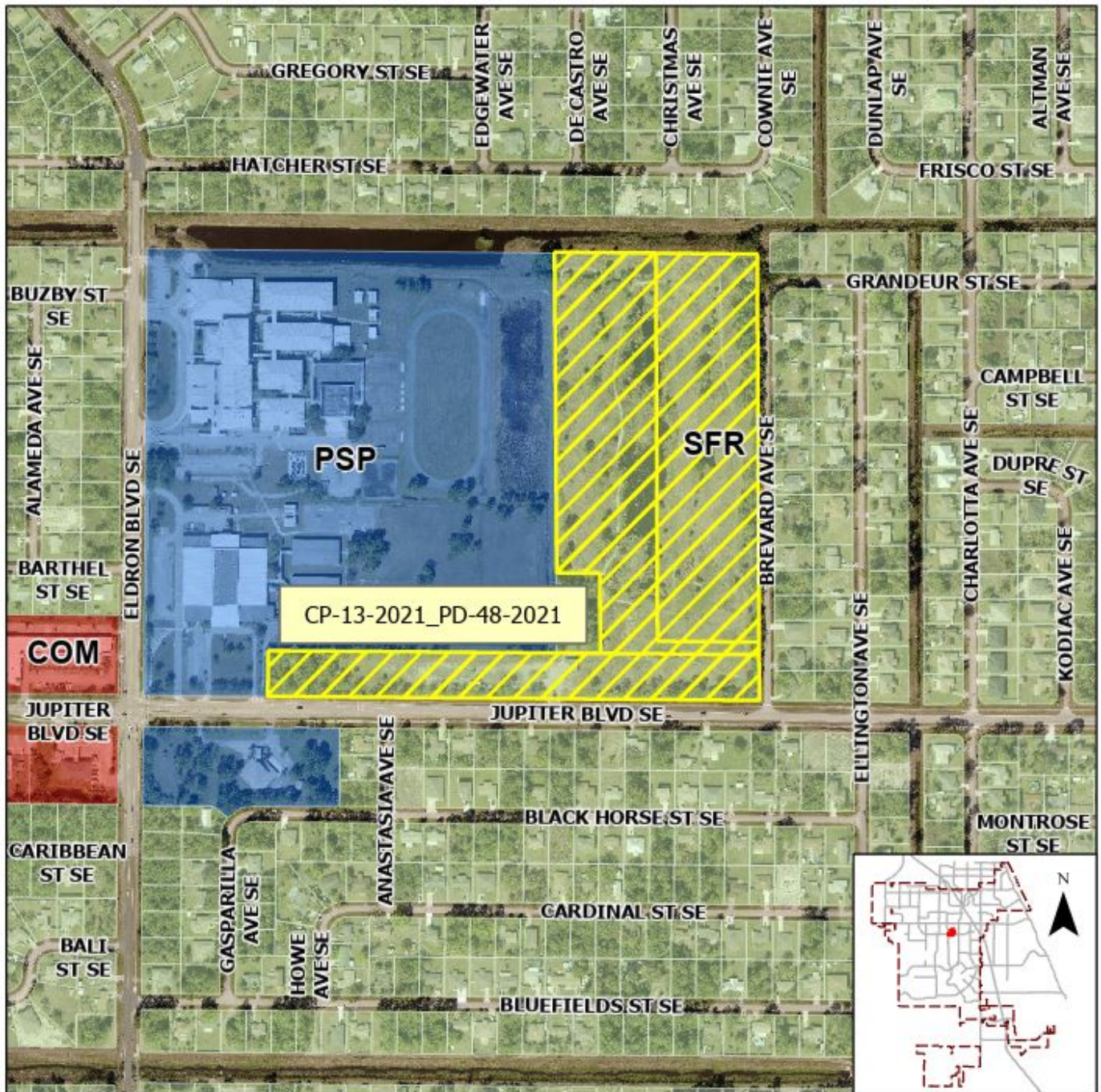
AERIAL LOCATION MAP CASE: CP-13-2021 & PD-48-2021

Subject Property

Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP CASE: CP-13-2021 & PD-48-2021

Subject Property

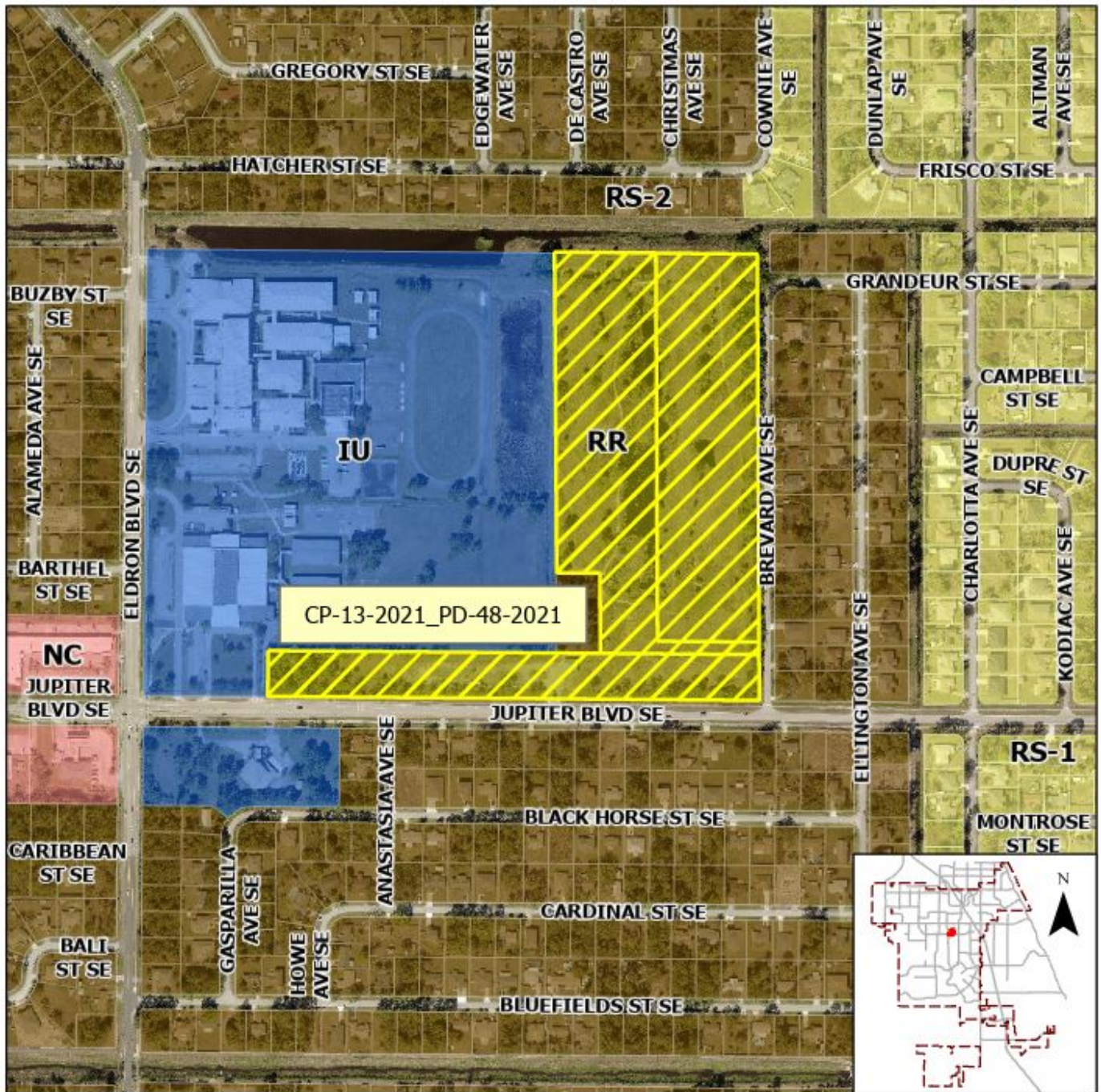
Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE

Future Land Use Classification

SFR – Single Family Residential Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP


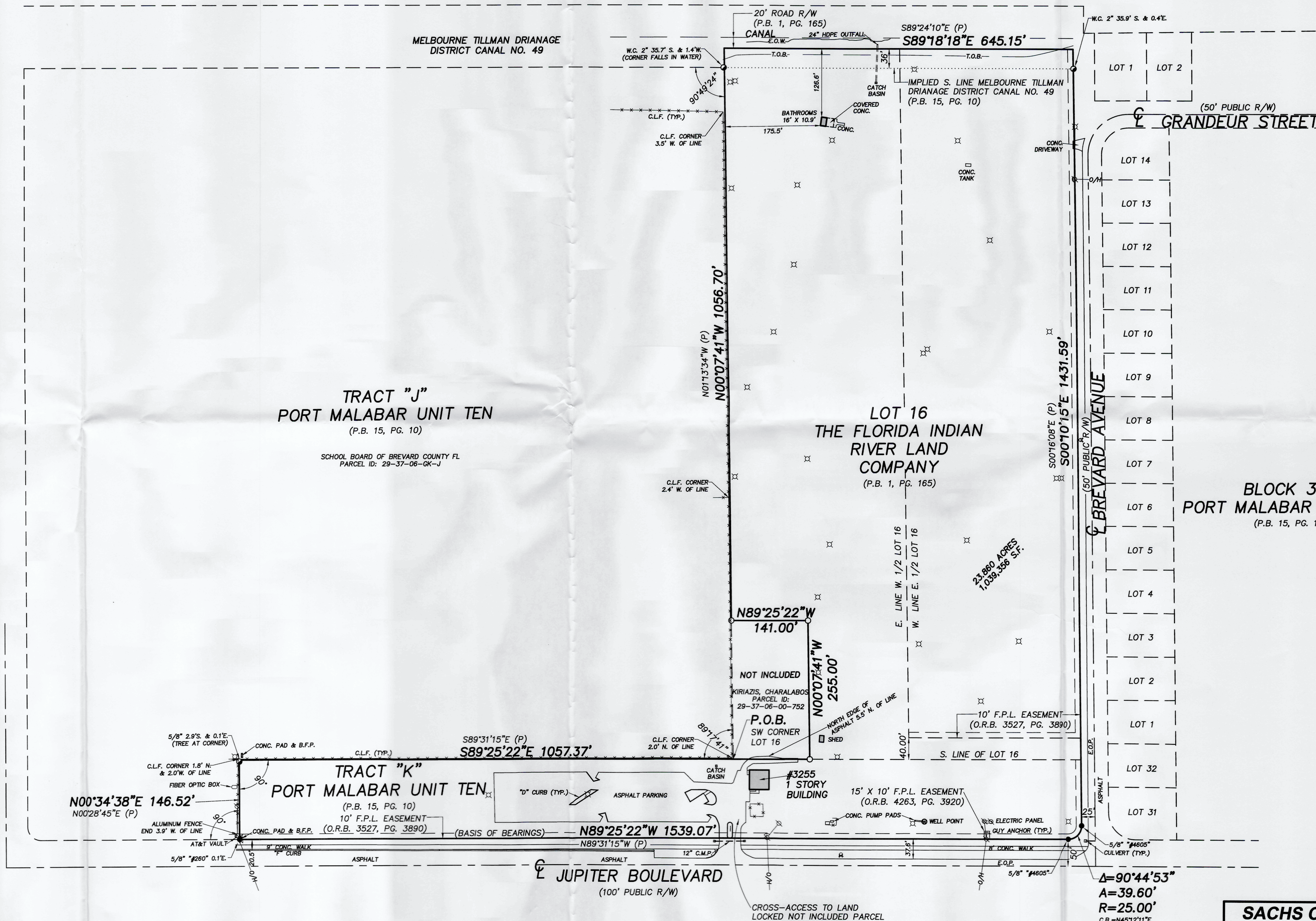
CASE: CP-13-2021 & PD-48-2021

Subject Property

Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE

Current Zoning Classification

RR – Rural Residential District



WALLACE SURVEYING
CORP. LICENSED BUSINESS # 4584
5553 VILLAGE BOULEVARD, WEST PALM BEACH, FLORIDA 33407 • (561) 640-4584

FIELD: B.M.	JOB No.: 19-1600	F.B. MC33 PG. 19
OFFICE: S.W.	DATE: 12/30/19	DWG. No.: 19-1600
C/K'D: C.W.	REF: 19-1600.DWG	SHEET: 2 OF 2



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopmentweb@palmbayflorida.org

**COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT
APPLICATION**

This application must be deemed complete and legible, and the original application with original signature(s) must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. **Large Scale Amendments will require 60 days of review prior to a scheduled Planning and Zoning Board meeting.** The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

APPLICATION AMENDMENT TYPE:

- ☒ **Small Scale** (50 acres or Less) ☐ **Text Amendment** (Comp. Plan)
- ☐ **Large Scale** (More than 50 acres)

PARCEL ID(S):

29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

TAX ACCOUNT NUMBER(S):

2926316, 2926317, 2925050

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION: (attach additional sheets if necessary):

Port Malabar Unit 10, Tract K, Pb 15 Pg 0010 also lot 16 of Florida Indian River Land Company Subdivision per Pb 1 Pg 165.

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):

23.86

CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 2 OF 3

LAND USE CLASSIFICATION AT PRESENT OR PLAN SECTION AFFECTED (ex.: Commercial, Single Family, Policy CIE-1.1B, etc.):

SFR

LAND USE CLASSIFICATION DESIRED OR PROPOSED TEXT CHANGE (attach additional sheets if necessary):

MU

PRESENT USE OF PROPERTY:

Vacant (abandoned golf course)

STRUCTURES LOCATED ON THE PROPERTY: 1

REZONING FILED IN CONJUNCTION WITH THIS APPLICATION: Rezoning to PUD

JUSTIFICATION FOR CHANGE (attach additional sheets containing supporting documents and evidence if necessary):

Current Land Use does not support the proposed development. In order to be consistent with the proposed development, it is necessary to change the land use.

SPECIFIC USE INTENDED FOR PROPERTY:

Multi Family - 176 lots for attached town-homes (20.91 acres)
Commercial - 3 lots (2.95 acres)

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:



*Application Fee. Make Check payable to "City of Palm Bay."



\$1,200.00 - Small Scale (50 acres or Less)



\$2,000.00 - Large Scale (More than 50 acres)



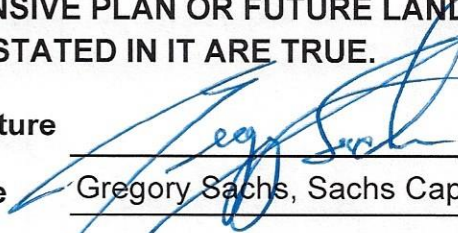
\$2,000.00 - Text Amendment (Comp. Plan)

- ☒ Legal description of the subject property with a sketch of the legal. **Also provide the site sketch on Memory Drive.**
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☒ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline. Staff will provide a sign template.
- ☒ **Where the property owner is not the representative for the request**, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.

Name of Representative Bruce Moia and David Bassford of MBV Engineering, Inc.
and Kim Rezanka of Lacey, Lyon and Rezanka Attorneys at Law

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature  **Date** 9-15-2021

Printed Name Gregory Sachs, Sachs Capital Group LP - Manager

Full Address 2132 Deep Water Lane, Suite 232, Naperville IL 60564

Telephone 312-543-4440 **Email** gsachs@sachscapitalgroup.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**


CITY OF PALM BAY, FLORIDA
COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION
PAGE 3 OF 3

- ☒ Legal description of the subject property with a sketch of the legal. **Also provide the site sketch on Memory Drive.**
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
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UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING COMPREHENSIVE PLAN OR FUTURE LAND USE MAP AMENDMENT APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature  **Date** 10/08/2021
Printed Name Gerald Lakin - Identical Investments, LLC
Full Address 2687 NW 84th Way, Cooper City FL 33024
Telephone 312-543-4440 **Email** geraldlakin@gmail.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

June 17, 2021

20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Subdivision per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, and
29-37-06-GK-K.

I, Owner Name: Gregory Sachs - Sachs Capital Group, LB

Address: 2132 Deep Water Lane, Suite 232 Naperville, IL 60564

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Bruce Moia and David Bassford, MBV Engineering Inc.

Address: 1250 W Eau Gallie Blvd, Unit H, Melbourne FL 32935

Telephone: 321-253-1510

Email: brucem@mbveng.com / davidb@mbveng.com

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

(Property Owner Signature)

STATE OF

Tn

COUNTY OF

Marshall

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 18 day of June, 20 21 by

Gregory Sachs

, property owner.

Jessie L. Spray (Notary)

, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:



June 17, 2021

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Sub.per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

I, Owner Name: Gerald M Lakin - Identical Investments LLC

Address: 2687 NW 84th Way, Cooper City, FL 33024

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Bruce Moia and David Bassford - MBV Engineering Inc.

Address: 1250 W. Eau Gallie Blvd, Unit H, Melbourne, FL 32935

Telephone: 321-253-1510

Email: brucem@mbveng.com, davidb@mbveng.com

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

Gerald Lakin

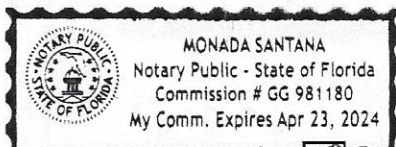
(Property Owner Signature)

STATE OF Florida

COUNTY OF Dade

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 17 day of June, 20 21 by

Gerald Michael Lakin, property owner.



Monada Santana

[Signature]

, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

Florida Driver license

June 17, 2021, 20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company Subdivision per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, and 29-37-06-GK-K.

I, Owner Name: Gregory Sachs - Sachs Capital Group, LB

Address: 2132 Deep Water Lane, Suite 232 Naperville, IL 60564

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law

Address: 1290 Rockledge Blvd, Suite 201, Rockledge, FL 32955

Telephone: 321-608-0892

Email: krezanka@LLR.law

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

(Property Owner Signature)

STATE OF Tennessee

COUNTY OF Marshall

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of September, 20 21 by

Gregory Sachs, property owner.

My commission expires March 1, 2025

Jennifer Spray Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

June 17, 2021

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Sub.per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

I, Owner Name: Gerald M Lakin - Identical Investments LLC

Address: 2687 NW 84th Way, Cooper City, FL 33024

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law

Address: 1290 Rockledge Blvd, Suite 201, Rockledge, FL 32955

Telephone: 321-608-0892

Email: krezanka@LLR.law

to represent the request(s) for:

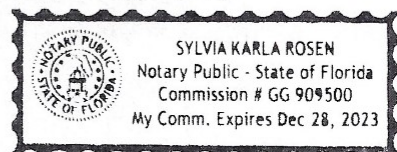
Preliminary Development Plan and Comprehensive Plan Amendment

Gerald M Lakin

(Property Owner Signature)

STATE OF Florida

COUNTY OF Dade



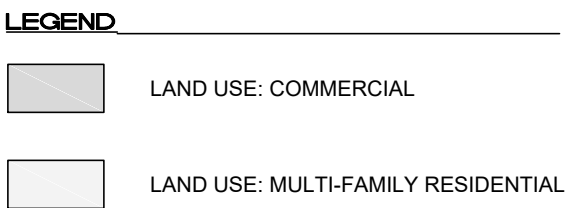
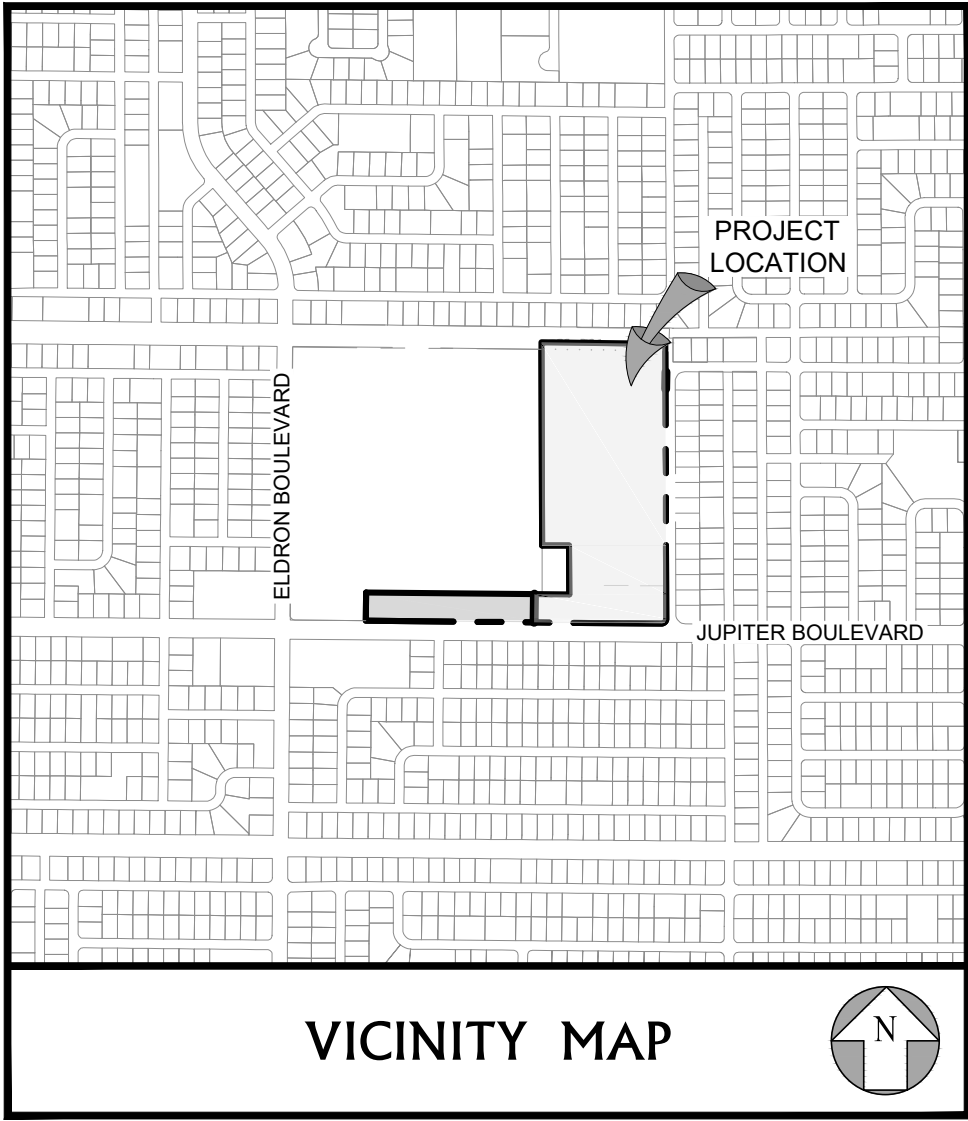
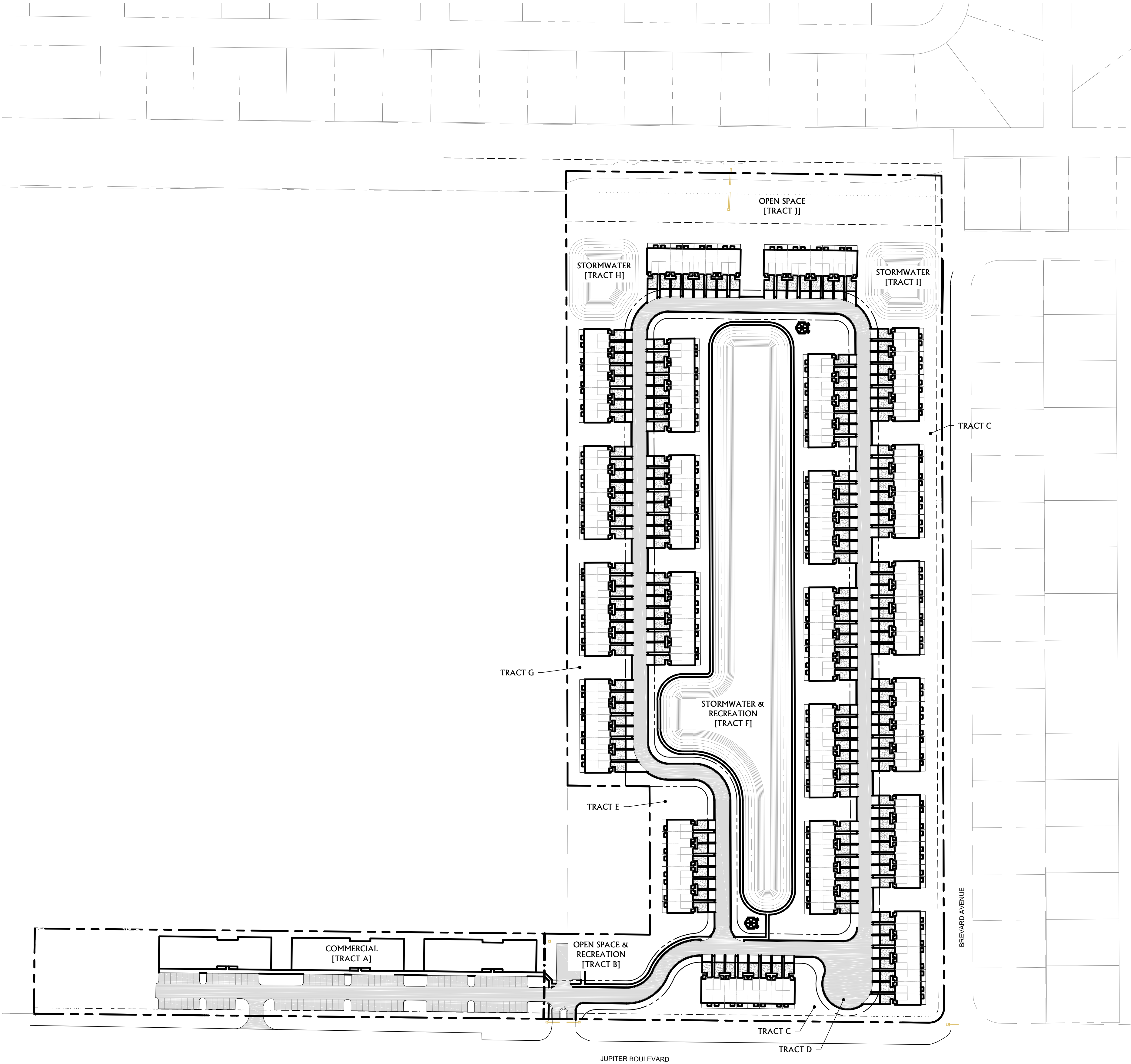
The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 15 day of SEPT, 2021 by
GERALD MICHAEL LAKIN, property owner.

Sylvia Karla Rosen

Sylvia Karla Rosen, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

FLDL: L250-293-65-026-0



LEGAL DESCRIPTION:

PARCEL 1:
THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LESS AND EXCEPT, BEING A PART OF THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER THEREOF, THENCE RUN IN AN EASTERLY DIRECTION ALONG THE SOUTHERN BOUNDARY OF SAID PROPERTY A DISTANCE OF 141 FEET, THENCE IN A NORTHERLY DIRECTION PARALLEL TO THE WEST BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET, THENCE WESTERLY ON A PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET TO THE POINT OF BEGINNING AND THE SOUTH 40 FEET OF THE EAST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 165.

ALSO

TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

THE EAST 1/2 OF LOT 16, IN SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR BREVARD COUNTY IN PLAT BOOK 1, PAGE 165, LESS AND EXCEPT THE SOUTH 40 FEET AND, LESS AND EXCEPT MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL NO. 49.

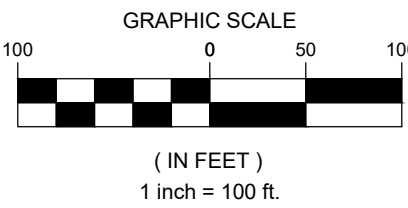
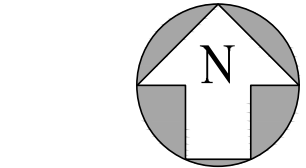
AND

LESS THE WESTERLY 876.49 FEET OF TRACT 'K' AS DESCRIBED ABOVE.

PARCEL 2:
THE WESTERLY 876.49 FEET OF TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TRACT	USE	TRACT AREA	AREA AT N.W.L.	OPEN SPACE CREDIT	MAINTENANCE RESPONSIBILITY	CONSTRUCTION PHASE
A	COMMERCIAL	2.948	0.00	1.062	COMMERCIAL	2
B	OPEN SPACE & RECREATION	0.406	0.00	0.406	MULTI-FAMILY	1
C	OPEN SPACE	1.105	0.00	1.105	MULTI-FAMILY	1
D	RIGHT-OF-WAY	2.948	0.00	0.00	MULTI-FAMILY	1
E	OPEN SPACE	0.147	0.00	0.147	MULTI-FAMILY	1
F	STORMWATER & RECREATION	4.188	2.289	3.616	MULTI-FAMILY	1
G	OPEN SPACE	0.332	0.00	0.332	MULTI-FAMILY	1
H	STORMWATER & RECREATION	0.427	0.211	0.374	MULTI-FAMILY	1
I	STORMWATER & RECREATION	0.430	0.215	0.375	MULTI-FAMILY	1
J	OPEN SPACE & RECREATION W/ MTWCD EASEMENT	1.685	0.00	1.685	MULTI-FAMILY	1

- NOTES:
- RESIDENTIAL LOTS MAKE THE REMAINDER OF THE AREA NOT WITHIN TRACTS (9.244 AC.).
 - TOTAL USABLE COMMON RECREATION & OPEN SPACE REQUIRED IS 5.60 ACRES (25%). OPEN SPACE CREDIT LISTED ABOVE IS CALCULATED AS THE TRACT ACREAGE LESS 25% OF THE ACREAGE OF THE STORMWATER PONDS AND SHALL BE IMPROVED WITH EITHER DOCKS OR PIERS.



SITE INFORMATION

GENERAL STATEMENT

THIS PROPOSED PROJECT INVOLVES CONSTRUCTION AND DEVELOPMENT A PLANNED UNIT DEVELOPMENT (PUD) WITH TOWNHOMES AND COMMERCIAL. INFRASTRUCTURE IMPROVEMENTS CONSIST OF DRAINAGE PIPES AND STRUCTURE, PARKING AREA, DRIVE AISLE AND WATER AND SEWER SERVICE. CONSTRUCTION OF THE FACILITIES WILL INVOLVE CLEARING, GRUBBING, FILLING, EXCAVATION, GRADING AND STABILIZATION. POTENTIAL POLLUTION SOURCES INCLUDE SOIL EROSION AND SILTATION, AND DISCHARGES FROM CONSTRUCTION EQUIPMENT (I.E. OIL, GAS).

APPLICANT/OWNER

SACHS CAPITAL GROUP
2132 DEEP WATER LANE
SUITE 232, NAPERVILLE, IL 60564
PHONE: (---) -----

SITE ADDRESS

JUPITER BOULEVARD
PALM BAY, FLORIDA

ENGINEER

MBV ENGINEERING, INC.
1250 W.EAU GALIE BLVD, UNIT L
MELBOURNE, FL 32935
PHONE: (321) 253-1510

SURVEYOR

WALLACE SURVEYING, CORP.
5553 VILLAGE BOULEVARD
WEST PALM BEACH, FLORIDA 33407
PHONE: (561) 640-4551

CURRENT FUTURE LAND USE

SFR - SINGLE FAMILY RESIDENTIAL

PROPOSED FUTURE LAND USE

MU - MULTI-USE

TAX PARCEL ID. NUMBER(S)

29-37-06-GK-K
29-37-06-00-751
29-37-06-00-750

CURRENT ZONING

RR - RURAL RESIDENTIAL

PROPOSED ZONING

PUD - PLANNED UNIT DEVELOPMENT

TAX ACCOUNT NO.

2925050
2926317
2926316

SITE DATA CALCULATIONS

TOTAL ACREAGE 23.86 AC.
TOTAL UNITS 176 UNITS
DENSITY 8.42 UNITS PER ACRE (15 MAX)

GROSS FLOOR AREA 30,000 SF
FLOOR AREA RATIO (BASED ON COMM AREA) 0.233

BUILDING INFORMATION

TOTAL EXISTING BUILDINGS 2 (RETAIL & STORAGE)
TOTAL PROPOSED BUILDINGS 176 RESIDENTIAL TOWNHOMES
3 COMMERCIAL RETAIL
1 CLUBHOUSE

CLUBHOUSE

COMMERCIAL RETAIL

PARKING INFORMATION

COMMERCIAL 1 SPACE /300 SF @ 30,000 SF = 100 SPACES

PROVIDED (COMMERCIAL)

= 100 SPACES

ADA PARKING (REQUIRED) 4

ADA PARKING (PROVIDED) 4

FLOOD ZONE

THE SUBJECT PROPERTY IS LOCATED IN FLOOD ZONE 'X' PER F.I.R.M. PANEL

No. 12009C 0660 G, DATED MARCH 17, 2014.

SANITARY SEWER SOURCE

CITY OF PALM BAY SANITARY SEWER SYSTEM

POTABLE WATER SOURCE

CITY OF PALM BAY WATER SYSTEM

BUILDING SETBACKS

	REQ'D	PROVIDED
FRONT	20'	25.5'
REAR	10'	20.0'
SIDE	5'	10.0'
SIDE INTERIOR	15'	N/A

PLANNED UNIT DEVELOPMENT NOTES:

- NO BUILDINGS, PARKING LOTS OR OTHER STRUCTURES MAY BE LOCATED WITHIN THE PERIMETER SETBACK AREA. HOWEVER, SWIMMING POOLS AND POOL DECKS MAY BE PERMITTED SUBJECT TO THE NORMAL RESIDENTIAL SETBACK REQUIREMENTS.
- WITHIN THE PUD, ALL UTILITIES INCLUDING, BUT NOT LIMITED TO, TELEPHONE, TELEVISION CABLE AND ELECTRICAL SYSTEMS SHALL BE INSTALLED UNDERGROUND.
- THE MINIMUM REQUIREMENTS FOR STREETS OR ROADS, SIDEWALKS, SEWER FACILITIES, UTILITIES AND DRAINAGE SHALL BE IN COMPLIANCE WITH THE REQUIREMENTS OF THE CITY OF PALM BAY SUBDIVISION REGULATIONS. SUBDIVISION SIGNS SHALL BE IN ACCORDANCE WITH CHAPTER 178 OF THE LAND DEVELOPMENT REGULATIONS.
- WALLS AND FENCES SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 170 OF THE LAND DEVELOPMENT REGULATIONS.
- PARKING SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 185 OF THE LAND DEVELOPMENT REGULATIONS.
- LANDSCAPING SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 180 OF THE LAND DEVELOPMENT REGULATIONS.

MBV ENGINEERING, INC.
PDA BOWLES VILLAZAR & ASSOCIATES
Civil • Structural • Surveying • Environmental
1250 W. EAU GALIE BLVD, SUITE H
MELBOURNE, FLORIDA 32935
P: 321-253-1510
F: 321-253-1511
ALSO WITH OFFICES IN:
VERO: 772-998-0035, FT PIERCE: 772-468-8005, PALM CITY: 772-468-9959

PUD OVERALL

Jupiter Bay

NOT FOR CONSTRUCTION
PLAN SHEETS ARE PRELIMINARY AND FOR INFORMATION ONLY. PLANS SHOULD NOT BE USED AS A BASIS FOR BIDS.
CONTRACTOR SHOULD ORDER THE OFFICIAL PLANS FROM THE ENGINEER OF RECORD TO ENSURE THAT ANY ACCORDING ARE PROPERLY DISTRIBUTED. PLANS ARE INVALID WITHOUT ENGINEER OF RECORDS SEAL AND SIGNATURE.

SHEET

C-1

20-1013

PRELIMINARY SET

CASES

CP-13-2021 & PD-48-2021

CORRESPONDENCE

Chandra Powell

From: Angela Burak
Sent: Friday, October 8, 2021 2:46 PM
To: Patrick Murphy; Chandra Powell; Christopher Balter
Cc: Kenny Johnson; Suzanne Sherman; Rosemarie Saavedra
Subject: RE: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

Passing along to Growth/Land Dev as well.



Angela Burak
Administrative Assistant to City Manager

Down to Earth And Up To Great Things™ ☎ 321.952.3413 or ext. 3207
angela.burak@palmbayflorida.org

From: Kenny Johnson <Kenny.Johnson@palmbayflorida.org>
Sent: Friday, October 8, 2021 2:38 PM
To: Suzanne Sherman <Suzanne.Sherman@palmbayflorida.org>; Angela Burak <Angela.Burak@palmbayflorida.org>; Terese Jones <Terese.Jones@palmbayflorida.org>; Patricia D. Smith <Patricia.Smith@palmbayflorida.org>
Subject: Fwd: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

Sincerely,
Kenny Johnson
Palm Bay City Councilman Seat 4
321-474-0183

From: asik@roadrunner.com <asik@roadrunner.com>
Sent: Friday, October 8, 2021 2:36 PM
To: City Council
Cc: 'asik@roadrunner.com'
Subject: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

TO: Palm Bay City Council
From
Raymond Asik Trustee/owner of property 473 Ellington SE, Palm Bay
Address
4112 Ford Lane
Vermilion, OH 44089
PH: 440-967-7761

CE: 440-759-9628

I am totally against the proposed 176 residential Planned Unit Development on property normally for zoned for about 35 housing units.

Amending zoning laws, rezoning this property then jamming 176 units into a normally residential property at 3255 Jupiter BLVD., 24 acres will drastically lower the the property values of the adjoining property of which one is mine. Having over 5 times the houses, 5 times the traffic, excess sewer and drain water issues is unacceptable.

There has to be much better uses for this property which adds to the neighborhood and increases property values should be the goals of Palm Bay City Council. Do the right thing for the neighborhood. Palm Bay residents and reject the plan by MBV Engineering.

There is an informational meeting on October 12, 6p at Franklin T. DeGroodt Public Library, 6475 Minton Road. Palm Bay run by Bruce Moia President, email is brucem@mbveng.com

Thank you,
Raymond (Ray) Asik

**Raymond J. Asik
4112 Ford Lane
Vermilion, OH 44089**

**Oct 25, 2021
PH: 440-967-77613**

**Subject: Palm Bay Planning and Zoning Board
Cases: CP-13-2021 and PD-48-2021**

I am a property owner greatly impacted by the proposed Preliminary Development plan to allow rezoning of Tax Parcels 750 and 751.

**The address for my property is
473 Ellington Ave SE Palm Bay, 32909
Property ID: 29 3705-GK-397-12**

I am totally against the Cases CP-13-2021 and PD-48-2021 to rezone Tax Parcels 750 and 751 for multiple family residential use and commercial use. Allowing single family residential use is fine with me not the 179 units that is proposed.

Doing a major rezoning of these residential properties to mixed use will cause water drainage, extra traffic and safety issues. Placing all of these units next to schools may also cause lots of safety issues for the schools. Extra heavy traffic is not appropriate for a strictly residential area. 50 or so houses can be built without any changes to the zoning laws.

To me the Palm Bay Planning, Zoning and City Council have more responsibility to all adjoining and future property owners than allowing this proposal to move forward. Single Family Residential use is what Tax Parcels 750 and 751 is and should continue to be allowed. I hope Palm Bay planners and City will realize approving these proposed major zoning changes is a big negative on the local community.

As I stated I AM TOTALLY against this proposal. I cannot attend the meeting but hope my one voice will be heard. I can be contacted at the above address / phone or at my email; asik@roadrunner.com

Thank You,

Ray Asik

PLEASE KEEP ME INFORMED OF THESE CASES.



CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
SPECIAL MEETING 2021-13

Held on Monday, November 15, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 6:00 p.m.

Mr. Rainer Warner led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present (Late)
MEMBER:	Rainer Warner	Present
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ANNOUNCEMENTS:

1. Mr. Weinberg addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.
2. Mr. Balter announced the various City Council hearing dates for the cases on the agenda.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the City taking over roads for the development in the future since the public would be unable to access the gated community.

In response to public comments, Mr. Balter explained that the staff condition regarding Chapter 182 ensured that the applicant understood that if any phase of the multi-phase development requested roads to be taken over by the City in the future, the process would occur through Chapter 182. The roads were currently slated to be private.

The floor was closed for public comments, and there was no correspondence in the file.

Motion to submit Case FD-47-2021 to City Council for approval, subject to the staff comments contained in the staff report.

Motion by Mr. Hill, seconded by Ms. Maragh. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case FD-47-2021 would be heard by City Council on December 2, 2021.

5. **CP-13-2021 - Jupiter Bay - Gregory Sachs, Sachs Capital Group, LP and Gerald Lakin, Identical Investments, LLC (Bruce Moia, P.E. and David Bassford, P.E., MBV Engineering, Inc. / Kim Rezanka, Lacey Lyon Rezanka Attorneys at Law, Reps.) - A small-scale Comprehensive Plan Future Land Use Map amendment from Single-Family Residential Use to Mixed Use. Tax Parcels 750 and 751, along with Tract K of Port Malabar Unit 10, Section 6, Township 29, Range 37, Brevard County, Florida, containing approximately 23.86 acres. Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE**

Mr. Murphy presented the staff report for Case CP-13-2021. Staff concluded that should the board and City Council approve Case CP-13-2021, certain conditions should apply.

Ms. Kim Rezanka with Lacey Lyon Rezanka Attorneys at Law (representative for the applicant) stated that the subject site was before the board in March under a different procedural mechanism, and she provided the board with a conceptual site rendering and information regarding Jo Daddy's, the golf course that was once on the property. The intent of the subject request was to construct townhomes in the residential area and include three commercial lots on the west end of the site. The property was near two schools. However, the former golf course was a lighted course that had operated from 7:00 a.m. to 11:00 p.m. and served beer and food in their clubhouse. Although the property was currently zoned RR, the site was in the middle of single-family homes of different sizes. She stated that each of the proposed townhomes would be privately owned and a minimum of 1,400 square feet. A preliminary traffic analysis had indicated 81 traffic trips for morning peak hours during school hours and 169 traffic trips for evening peak hours. The evening peak hours should not affect or coincide with the after-school traffic. A Citizen Participation Plan (CPP) meeting was held and attended by 13 residents. The residents were assured that the townhomes would not be rentals, a vegetative buffer would be located on the north and east property lines, and an 8-foot-high fence would be erected along the east side of the property. Traffic was also a concern.

Mr. Warner asked if the Jupiter Boulevard access would be the only access for the project. Ms. Rezanka stated that this was correct and that the area residents did not want an access onto Brevard Avenue.

Ms. Maragh asked if there were other issues discussed at the CPP meeting. Ms. Rezanka stated that lighting was also discussed, which would be addressed during the site plan stage.

Mr. Warner wanted to know the difference between the initial and subject applications. Mr. Bruce Moia with MBV Engineering, Inc. (representative for the applicant) explained that the first submittal was a straight rezoning without a development plan. The current submission had a companion development plan to alleviate City Council concerns.

The floor was opened for public comments.

Mr. Scott Wall DeSousa (resident at Hatcher Street SE) spoke in favor of the request. He stated that the project would be a huge benefit to the area as it would bring in sewer lines that residents could connect into.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the request. He stated that only two percent of vacant RR land remained in the City, and the subject proposal would eliminate one of those few sites. He questioned why the applicant was allowed to resubmit a same request that City Council had recently denied. The denial should require a one-year wait as there was no major change to the request. He commented that regardless of peak hours, traffic was a safety hazard when vehicles had to cross the double yellow lines to maneuver around traffic, and additional commercial business would add to the complication.

In response to public comments. Mr. Moia stated that the subject site was not truly rural property, and Jupiter Boulevard was a major collector road that was compatible with commercial use. He said that school traffic was an issue that would be addressed as best as possible.

The floor was closed for public comments, and two items of correspondence were in the file from a resident in opposition to the request.

Motion to submit Case CP-13-2021 to City Council for approval, subject to the staff conditions contained in the staff report.

Motion by Ms. Jordan, seconded by Mr. Hill.

Mr. Warner was not in favor of residential development of the property with a single access onto a busy collector road. The project did not seem right for the site.

Ms. Maragh asked why the previously denied request could be resubmitted in less than a year. Mr. Murphy stated that the former Growth Management Director had ruled that applications for the request could be resubmitted since the subject proposal was for a different land use and zoning, and there was now a site-specific plan. Ms. Cockcroft added that the City Attorney had also ruled that the initial and present submittals were not the same.

Mr. Weinberg commented on how traffic was a concern that would have to be addressed. It was unlikely that the subject location would be considered for RR use, and Palm Bay was in need of variety in housing.

Motion amended to submit Case CP-13-2021 to City Council for approval, subject to the staff conditions contained in the staff report, an additional vegetative buffer on the north and east property lines, and an 8-foot-high fence on the east property line.

Motion by Ms. Jordan, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case CP-13-2021 would be heard by City Council on January 6, 2022.

6. ****PD-48-2021 - Jupiter Bay - Gregory Sachs, Sachs Capital Group, LP and Gerald Lakin, Identical Investments, LLC (Bruce Moia, P.E. and David Bassford, P.E., MBV Engineering, Inc. / Kim Rezanka, Lacey Lyon Rezanka Attorneys at Law, Reps.) - Preliminary Development Plan to allow a proposed PUD for a 179-unit mixed use development called Jupiter Bay. Tax Parcels 750 and 751, along with Tract K of Port Malabar Unit 10, Section 6, Township 29, Range 37, Brevard County, Florida, containing approximately 23.86 acres. Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE**

Mr. Murphy presented the staff report for Case PD-48-2021. Staff recommended Case PD-48-2021 for approval, subject to the staff comments.

Ms. Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law (representative for the applicant) stated that one-acre lots and the rural uses permitted under the RR, Rural Residential zoning district did not make sense for the subject property. The proposed recreation tract and stormwater tracts were required by the PUD, and amenities included a clubhouse, swimming pool, pavilion, and walking path. The project offered a different housing product for the City, and the commercial acreage was appropriate for the area. The applicant had agreed to provide a vegetative buffer on the north and east property lines and an 8-foot-high fence along the east side of the

ORDINANCE 2022-09

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 183, COMPREHENSIVE PLAN REGULATIONS, SECTION 183.01, COMPREHENSIVE PLAN, SUBSECTION (D), ADOPTION OF FUTURE LAND USE MAP, BY AMENDING THE FUTURE LAND USE MAP; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has designated the Planning and Zoning Board as its Local Planning Agency and said Local Planning Agency held an adoption hearing on an amendment to the Comprehensive Plan on November 15, 2021, after public notice, and

WHEREAS, the City Council of the City of Palm Bay, pursuant to Chapter 163, Florida Statutes, held an adoption hearing on an amendment to the Comprehensive Plan on January 6, 2022, after public notice, and

WHEREAS, the City Council of the City of Palm Bay desires to adopt said small scale amendment to the Comprehensive Plan of the City of Palm Bay.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Comprehensive Plan of the City of Palm Bay, Brevard County, Florida, is hereby amended to provide for the change in land use of property from Single Family Residential Use to Mixed Use, which property is legally described as follows:

Tax Parcels 750 and 751, along with Tract "K", Port Malabar Unit 10, of the Public Records of Brevard County, Florida; Section 6, Township 29S, Range 37E; containing 23.86 acres, more or less.

SECTION 2. The Future Land Use Map is hereby changed to reflect this amendment.

SECTION 3. All staff report conditions and limitations shall be met and those conditions and limitations shall be made a part of the Comprehensive Plan. Specifically:

- A) At the time of development plan submittal, the property owner shall submit a traffic impact analysis and Phase One Environmental Study;
- B) The maximum density shall be 176 residential units;
- C) The maximum commercial development shall be 30,000 gross square feet;
- D) At the time of development plan submittal, the property owner shall submit a Declaration of Covenants, Conditions, and Restrictions that identifies the development standards;
- E) An additional vegetative buffer on the north and east property lines; and
- F) An eight (8) foot-high fence on the east property line.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. The provisions within this ordinance shall take effect thirty-one (31) days from the enactment date.

Read in title only and duly enacted at Meeting 2022- , held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

*Only one reading required pursuant to Chapter 163, Florida Statutes.

Reviewed by CAO: _____

Applicant: Sachs Capital Group, LP and Identical Investments, LLC
Case: CP-13-2021

cc: (date) Brevard County Property Appraiser
Applicant
Case File



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Patrick J. Murphy, Assistant Growth Management Director

DATE: 1/6/2022

RE: Resolution 2022-02, granting approval of a Preliminary Development Plan for a proposed mixed-use development to be known as 'Jupiter Bay PUD' in RR (Rural Residential District) zoning, which property is located at the northwest corner of Jupiter Boulevard and Brevard Avenue (23.86 acres) (Case PD-48-2021, Sachs Capital Group, LP and Identical Investments, LLC). (Quasi-Judicial Proceeding)

Mr. Gregory Sachs, Sachs Capital Group, LP and Gerald Lakin, Identical Investments, LLC (Bruce Moia, P.E. and David Bassford, P.E., MBV Engineering, Inc. / Kim Rezanka, Lacey Lyon Rezanka Attorneys at Law, Reps.) have submitted for a Preliminary Development Plan (PDP) approval of a 176-unit multiuse development to be called Jupiter Bay PUD. The property is located at the northwest corner of Jupiter Boulevard SE and Brevard Avenue SE.

On April 1, 2021, the applicant was denied a future land use request to change the property from Single-Family Residential Use to Multiple-family Residential Use and Commercial Use, so the companion request to rezone the RR, Rural Residential property to the RM-10, Single-, Two-, and Multi-Family Residential and NC, Neighborhood Commercial zoning districts was rendered moot. The applicant is now requesting a PUD, Planned Unit Development District to consist of 176 lots for attached townhomes (22 buildings containing 8 townhomes each) and three (3) commercial lots. The PDP proposes a clubhouse and pool at the entrance to the residential development, a gazebo at either end of the main stormwater pond, and a walking trail that encircles the pond. The internal roadway shall be privately maintained by the homeowner's association. A traffic study, however, is required at Final Development submittal for possible intersection improvements, turn lanes, and to examine the interaction of the proposed driveways with current traffic patterns. The applicant is also required to connect to City water and sewer. The companion future land use request for the subject proposal is Case CP-13-2021.

Upon review, the proposed request appears to conform with the applicable requirements for Preliminary Development Plan approval subject to conditions.

REQUESTING DEPARTMENT:
Growth Management

RECOMMENDATION:

Motion to approve Case PD-48-2021, subject to the staff comments and the following items for submittal with a Final PUD application:

- A preliminary subdivision plat and Opinion of Title,
- Declaration of Covenants & Restrictions establishing development standards,
- Construction drawings,
- A Concurrency Determination letter from the School Board of Brevard County,
- Submission of an Endangered Species Assessment,
- Identification of lighting within the neighborhood,
- Explore options for providing access for Parcel 752; and
- Compliance with the conditions of CP-13-2021.

The technical staff review comments attached to the staff report shall also be incorporated.

Planning and Zoning Board Recommendation:

Unanimous approval of the request, subject to the staff comments, and elimination of the condition to provide access for Parcel 752.

ATTACHMENTS:

Description

Case PD-48-2021 - Staff Report

Case PD-48-2021 - Preliminary Development Plan

Case PD-48-2021 - Application

Case PD-48-2021 - Correspondence

Case PD-48-2021 - Board Minutes

Resolution 2022-02

Resolution 2022-02, Exhibit A

Resolution 2022-02, Exhibit B

Resolution 2022-02, Exhibit C

Resolution 2022-02, Exhibit D



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

PD-48-2021

PLANNING & ZONING BOARD HEARING DATE

November 15, 2021

PROPERTY OWNER & APPLICANT

Sachs Capital Group, LP (Gregory Sachs, Manager) Represented by Bruce Moia and David Bassford of MBV Engineering, Inc. and Kim Rezanka, Attorney at Law

PROPERTY LOCATION/ADDRESS

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. This property is the former Joe Daddy's Golf Course, at 3255 Jupiter Boulevard SE

SUMMARY OF REQUEST

Preliminary Development Plan (PDP) approval for a 176-unit multi-use development to be called **Jupiter Bay PUD**.

Existing Zoning

RR, Rural Residential

Existing Land Use

Single Family Residential Use

Site Improvements

Vacant, Former Golf Course and Associated Parking Lot

Site Acreage

23.86

SURROUNDING ZONING & USE OF LAND

North

RS-2, Single-Family Residential; Melbourne-Tillman Canal No. 49

East

RS-2, Single-Family Residential; Single-Family Homes

South

RS-2, Single-Family Residential; Single-Family Homes

West

IU, Institutional Use; Jupiter Elementary and Southwest Middle Schools

COMPREHENSIVE PLAN

COMPATIBILITY

Yes, subject to approval of Case No. CP-13-2021

BACKGROUND:

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. Specifically, the subject property is Tax Parcel 750, 751, and Tract K, Section 6, Township 29 south, Range 37 east, Brevard County, Florida. This property is a former golf course and associated parking area. The three (3) parcels total approximately 23.86 acres of land.

On April 1, 2021 (at RCM 2021-09) City Council voted to deny the applicant's request to change the future land use designation of the subject property from Single-family Residential Use to Multiple-family Residential Use and Commercial Use. A companion rezoning application from RR, Rural Residential to the RM-10, Single-, Two-, and Multi-Family Residential and NC, Neighborhood Commercial zoning districts, were also reviewed. According to the City Attorney, since the land use amendment was denied, the rezoning application was rendered moot.

The applicant is currently seeking Preliminary Development Plan (PDP) approval for a Planned Unit Development. The purpose of this request is to allow for the construction of a multi-use development to be called Jupiter Bay PUD. The applicant for this request is Gregory Sachs of the Sachs Capital Group, LP and Gerald Larkin of Identical Investments, LLC. They are being represented by Bruce Moia and David Bassford, of MBV Engineering, Inc. and Kim Rezanka of Lacey, Lyon, and Rezanka Attorneys at Law.

ANALYSIS:

The planned unit development (PUD) is a concept which encourages variation in residential developments by allowing deviation in lot size, type of dwellings, density, lot coverage, setbacks, and open space, from those elements required in any singular zoning classification. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as commercial uses designed to serve the inhabitants of the proposed community.

Specifically, the development plans (C-1 thru C-3) propose 176 townhome units and three (3) commercial buildings, each containing 10,000 square feet of area. According to the exhibit, there are 22 buildings containing 8 townhomes each. The buildings are being placed along an internally looped roadway, to face each other, in a slightly off-set pattern.

A linear retention pond has been deigned within the center of the property, running in a north-south fashion. Additional stormwater ponds are placed in the northern area of the site. All stormwater run-off from the commercial development will be piped to the central pond. Discharge from the system is directed to Melbourne-Tillman Canal No. 49, which runs along the northern boundary of the project. Prior to commencement of construction, the design shall be approved by both the City and the St. Johns River Water Management District.

The internal roadway proposes 24' of traversable pavement, between the abutting driveways of the townhomes buildings. The roadway shall remain private and be maintained by the Homeowner's Association. At the time of FDP submittal, a traffic study will be required. In addition to possible intersection improvements and project turn lanes, the study shall examine the interaction of its proposed driveways with the current traffic patterns.

The Applicant is required to design water & sewer systems of adequate size to accommodate the development and connect to the city's water & sewer system. This design shall be provided upon engineered construction drawings and submitted with the FDP. The applicant may be required to extend or loop service from the existing water and sewer connection points. A Utility Agreement shall be executed prior to construction plan approval.

Section 185.065 of the City's Code of Ordinances requires a Planned Unit Development to permanently set aside and designate on the site plan recreational and/or open space for use by residents of the PUD, equaling 25% of the project site acreage. At 23.86 acres, this minimum set aside shall be 5.97 acres. Such useable space shall in the form of active or passive recreation areas. Common open space shall be improved to the extent necessary to complement the residential uses and may contain compatible and complimentary structures for the benefit and enjoyment of the residents of the PUD.

The PDP proposes a clubhouse and pool at the entrance to the residential development, a gazebo at either end of the main stormwater pond, and a walking trail that encircle this pond. The Preliminary Development Plan (PUD-1) provides a breakdown stating that the minimum set aside has been met. However, this will need to be further vetted with the FDP submittal to ensure the minimum code requirements (and intent) are satisfied. The applicant shall explore the design of site lighting throughout the project, both within the roadway and for pedestrian lighting along the pathway that encircles the pond.

During the plan review process a tree survey identifying all specimen trees shall be provided to determine the exact location and type, for possible preservation. Lastly, staff recommends access be provided from this project to the land-locked property (Parcel ID 29-37-06-00-752).

CONDITIONS:

To receive Preliminary Planned Unit Development approval, the proposal must meet the requirements of Section 185.066 of the City of Palm Bay's Code of Ordinances. Upon review, it appears that the request is in conformance with the applicable requirements of this section, subject to the following items being *submitted with* a Final PUD application:

- A preliminary subdivision plat and Opinion of Title,
- Declaration of Covenants & Restrictions establishing development standards,
- Construction drawings,

- A Concurrency Determination letter from the School Board of Brevard County,
- Submission of an Endangered Species Assessment,
- Identification of lighting within the neighborhood,
- Provide access for Parcel 752; and
- Compliance with the conditions of CP-13-2021.

Lastly, technical staff review comments are attached to this report and shall be incorporated.

STAFF RECOMMENDATION:

Case PD-48-2021 is recommended for approval, subject to the staff comments.

TECHNICAL COMMENTS

CASE PD-48-2021 – JUPITER BAY PUD

PUBILC WORKS (Mehul Parekh, PE, Public Works Director):

Driveway and right of way utilities:

1. Provide sidewalk along side street and frontage with off-site to on site connections commercial properties.
2. Traffic study and roadway improvement warrant analysis are required.
3. Any land locked property must be provided access with development.
4. Additional MTWCD right of way/ easement for existing canal.
5. Cross access, drainage and utilities agreements.
6. HOA or POA documents shall be provided for review.

Survey:

Boundary

1. Further development review will require tree locations and topographic survey.
2. Per ORB 3074 PGS 2366 - 2526 (specific page 2488) The Melbourne Tillman Water Control District has ownership of the North 36 feet of the parcel. For further information contact City Surveyor 321.952.3400 X6438.
3. Please clarify the exact description of the found W.C.s.
4. Please show both invert elevations of the cross drain at Jupiter and Brevard.
5. Please ensure legal access, through easement, of the land locked parcel (29-37-06-00-752).
6. Please use City of Palm Bay vertical datum from database. Provided upon request.
7. Please verify the less and except of the West half of Lot 16 includes the South 40 feet of the East half of Lot 16.
8. Further Comments to follow.

Engineering:

Ch 174 City Code of Ordinances and Ch 62-330 F.A.C. design and performance criteria and specifications shall be met.

Transportation impact fees will be assessed based on the final number of dwelling units

A peak AM and PM trip generation analysis shall be provided. Should AM or PM peak trips exceed 100 trips a transportation impact study would be required.

Public Works reserves the right to make other applicable comments during the site plan review process.

UTILITIES (Christopher Little, PE, Utilities Director):

The Utilities Department has no objection to the proposed 176 Multi-Family residential units and 3 commercial parcels PUD.

Upon development of the site, the following shall apply for connection to the City's water and sewer utilities system:

1. The applicant/owner, at their expense, will be required to design, permit, install, inspect and test water & sewer systems of adequate size to accommodate the development and to connect to the City's water & sewer system. [§ 200.11(D)(1) - On-Site Facilities].
2. The applicant/owner may be required to extend and/or loop service from the existing water and sewer connection points [§ 200.11(D)(2) -Off-Site Facilities].
3. The applicant/owner will be responsible for the property's hydraulic share for the utilities. Oversizing of utilities at the request of the Utilities Department will be subject to a refunding agreement or refundable advance [§ 200.1(D) & (E)]. The City of Palm Bay's 2017 Wastewater Master Plan & 2017 Water Master Plan, both of which are available upon request, identify proposed mainline extensions with the City's current pipe sizing requirements.
4. A City of Palm Bay "Utility Agreement" shall be executed between the Property Owner and the City. All Utility impact/connection charges noted in the "Utility Agreement" must be paid as outlined in the terms and conditions of the Utility Agreement. All fees are subject to change annually on October 1. The Property Owner shall submit a certified copy of the property deed as verification of ownership as part of the Utility Agreement.
5. All utility construction, materials, and testing shall be in accordance with the latest revision of the Palm Bay Utility Department Policies, Procedures and Standards Handbook and the Standard Detail Drawings. Prior to any construction, all required FDEP Permit applications for the Water and Sanitary Sewer Construction shall be processed through and copied of the Permits filled with the Utilities Department.

BUILDING-FIRE (Michael Bloom, CFPS, Fire Plans Examiner):

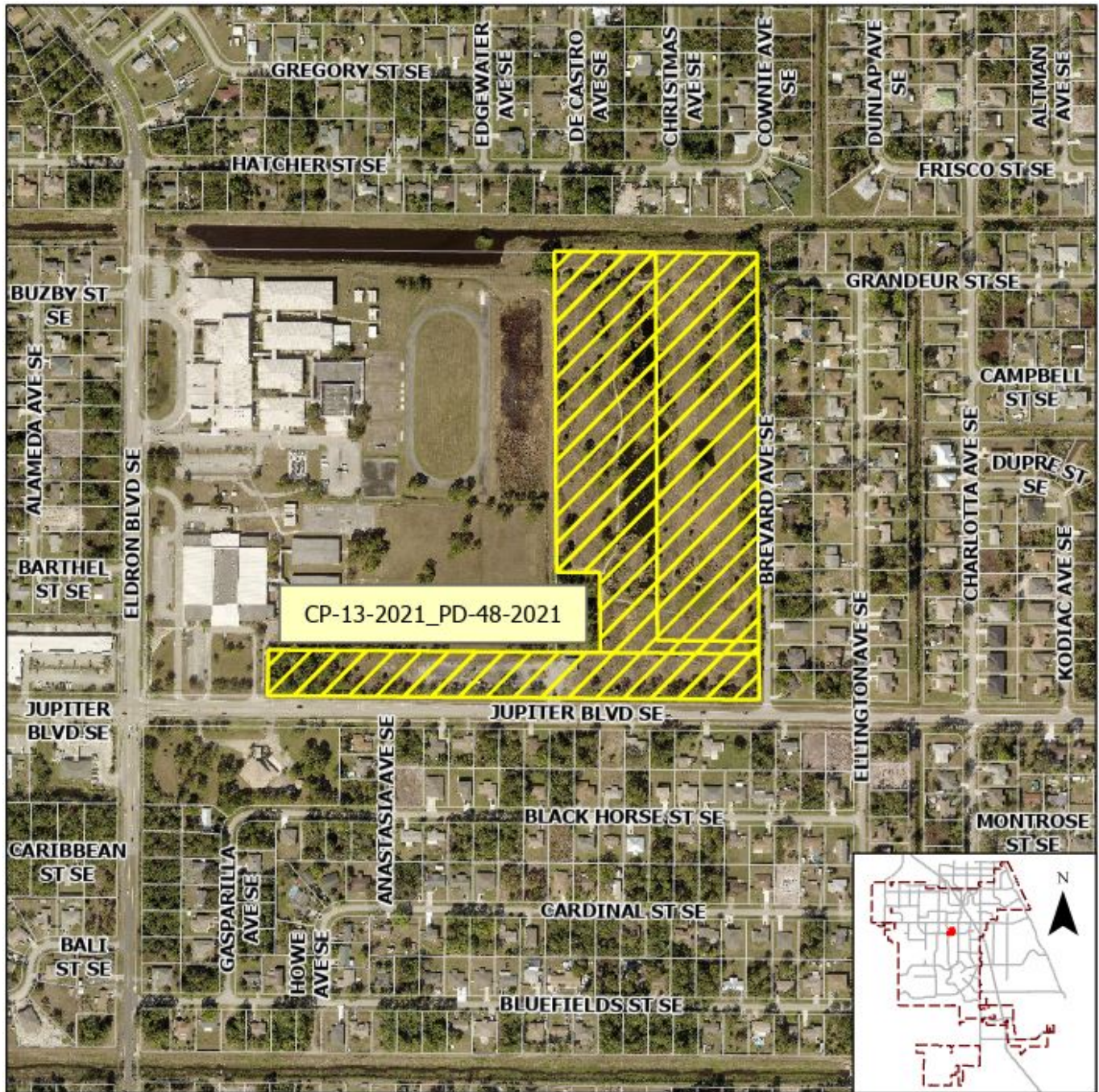
1. Subdivisions shall meet all requirements of the currently adopted Florida Fire Prevention Code (FFPC) 7th edition, Florida Administrative Code (FAC) Florida State Statute (FSS) and City of Palm Bay Ordinances (COPBO).

2. (FFPC 1:18.4.5.1.1) The minimum fire flow and flow duration requirements for one- and two-family dwellings having a fire flow area that does not exceed 5000 ft²(464.5 m²) shall be 1000 gpm (3785 L/min) for 1 hour.
3. (FFPC 1-18.4.5.2.1) Fire flow and flow duration for one- and two-family dwellings having a fire flow area in excess of 5000 ft² (334.5 m²) shall not be less than that specified in Table 18-4.5.1.2.
4. Townhouses shall meet all requirements of (FSS 481.203(16)) or they shall be protected by a fire sprinkler system per FFPC and COPBO.
5. (FFPC 1-18.2.3.5.4) Dead-end fire department access roads in excess of 150 ft. (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

BUILDING-FLOODZONE (James Williams, CFM, Floodplain Coordinator):

Floodzone X, No FEMA CLOMR/LOMR application required.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



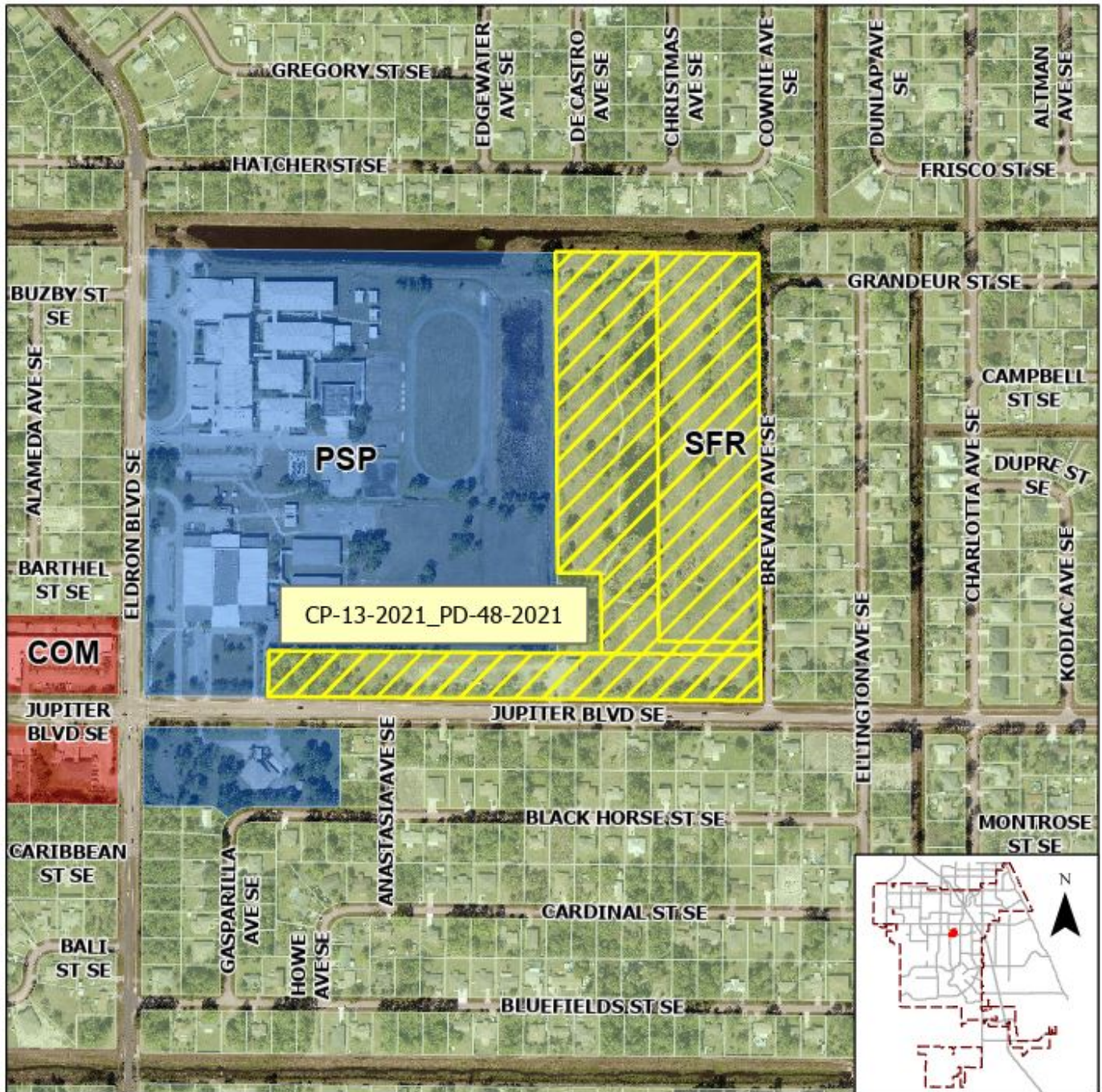
AERIAL LOCATION MAP CASE: CP-13-2021 & PD-48-2021

Subject Property

Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP CASE: CP-13-2021 & PD-48-2021

Subject Property

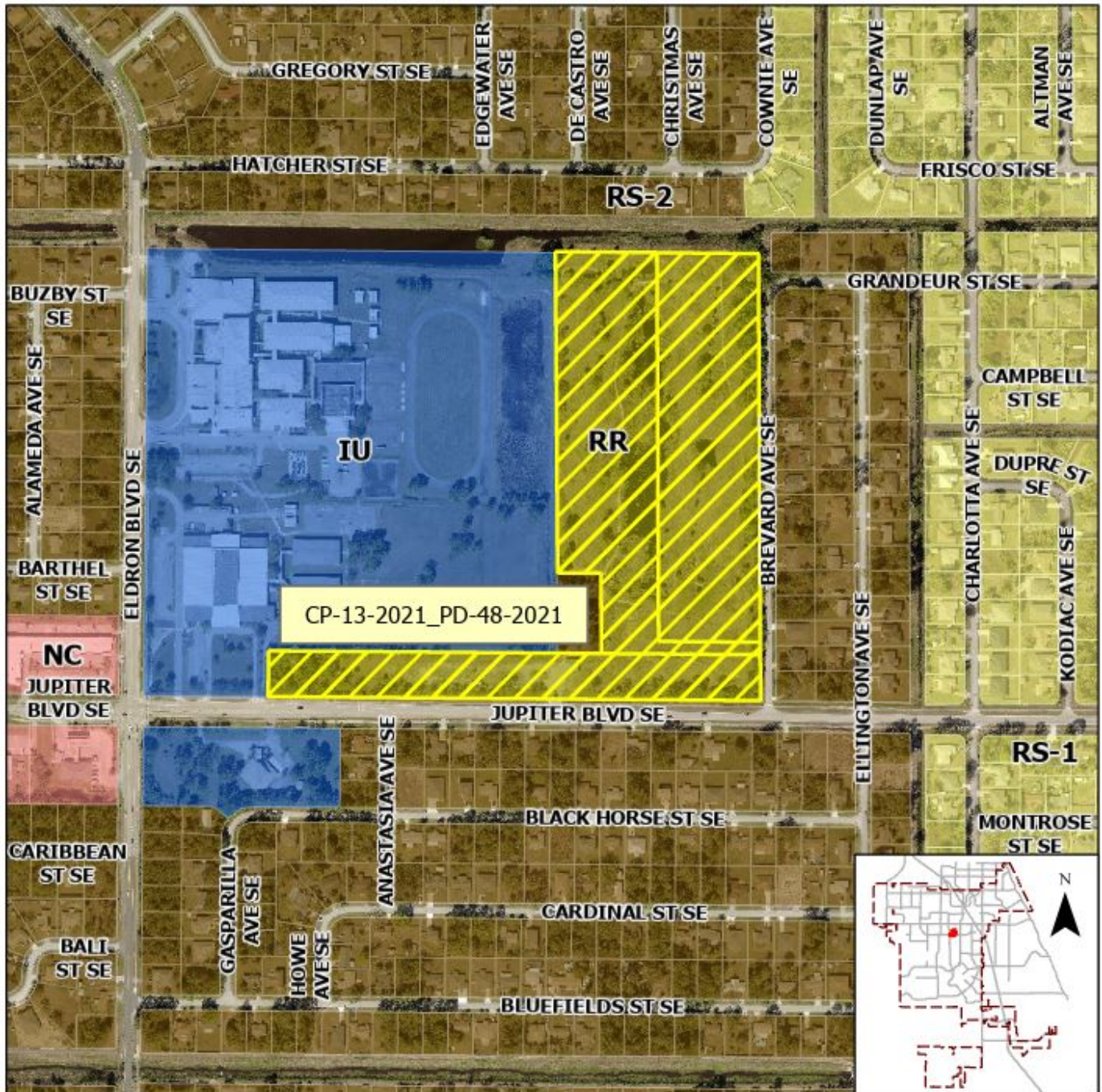
Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE

Future Land Use Classification

SFR – Single Family Residential Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

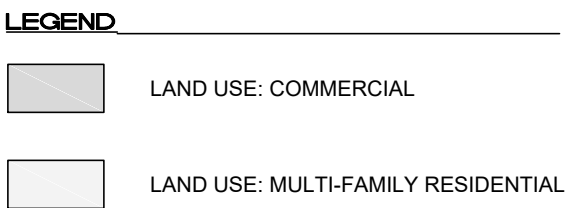
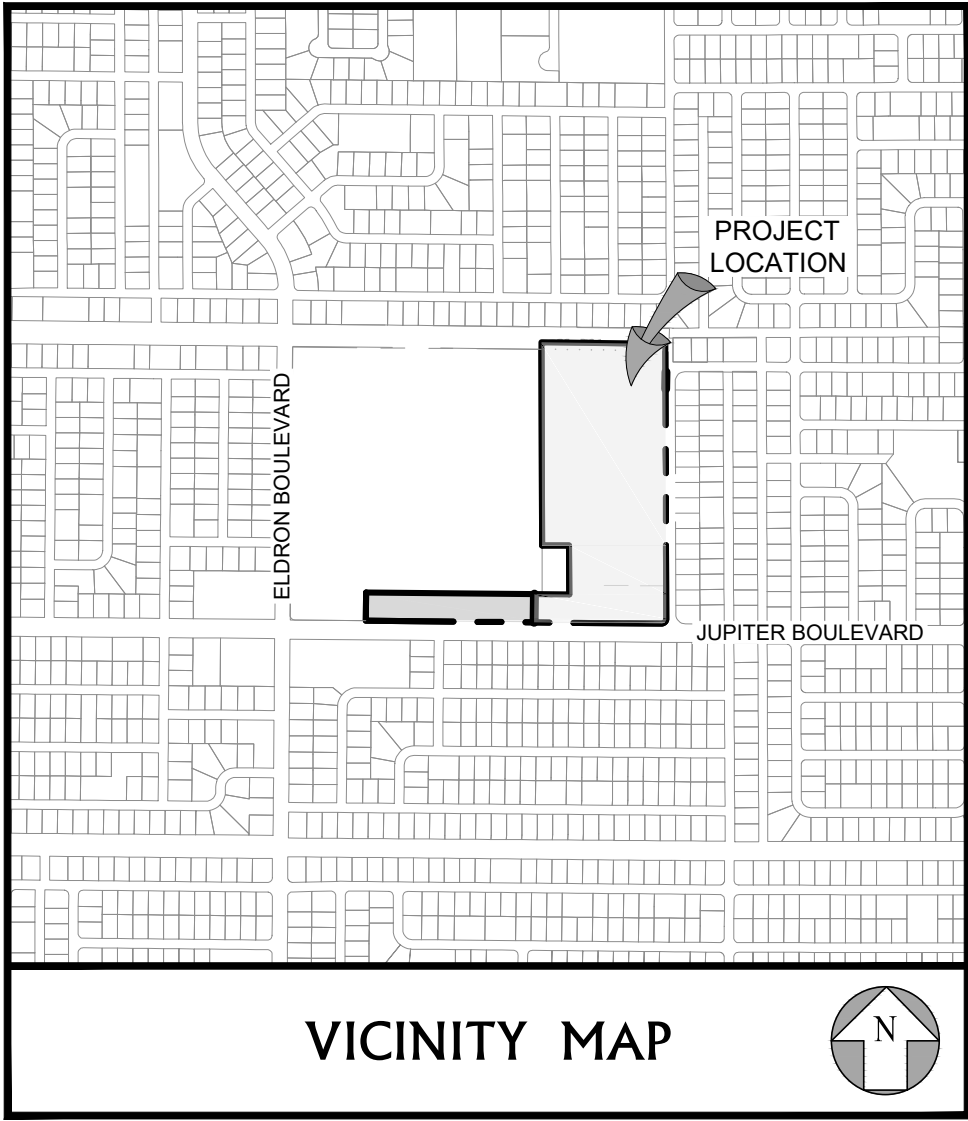
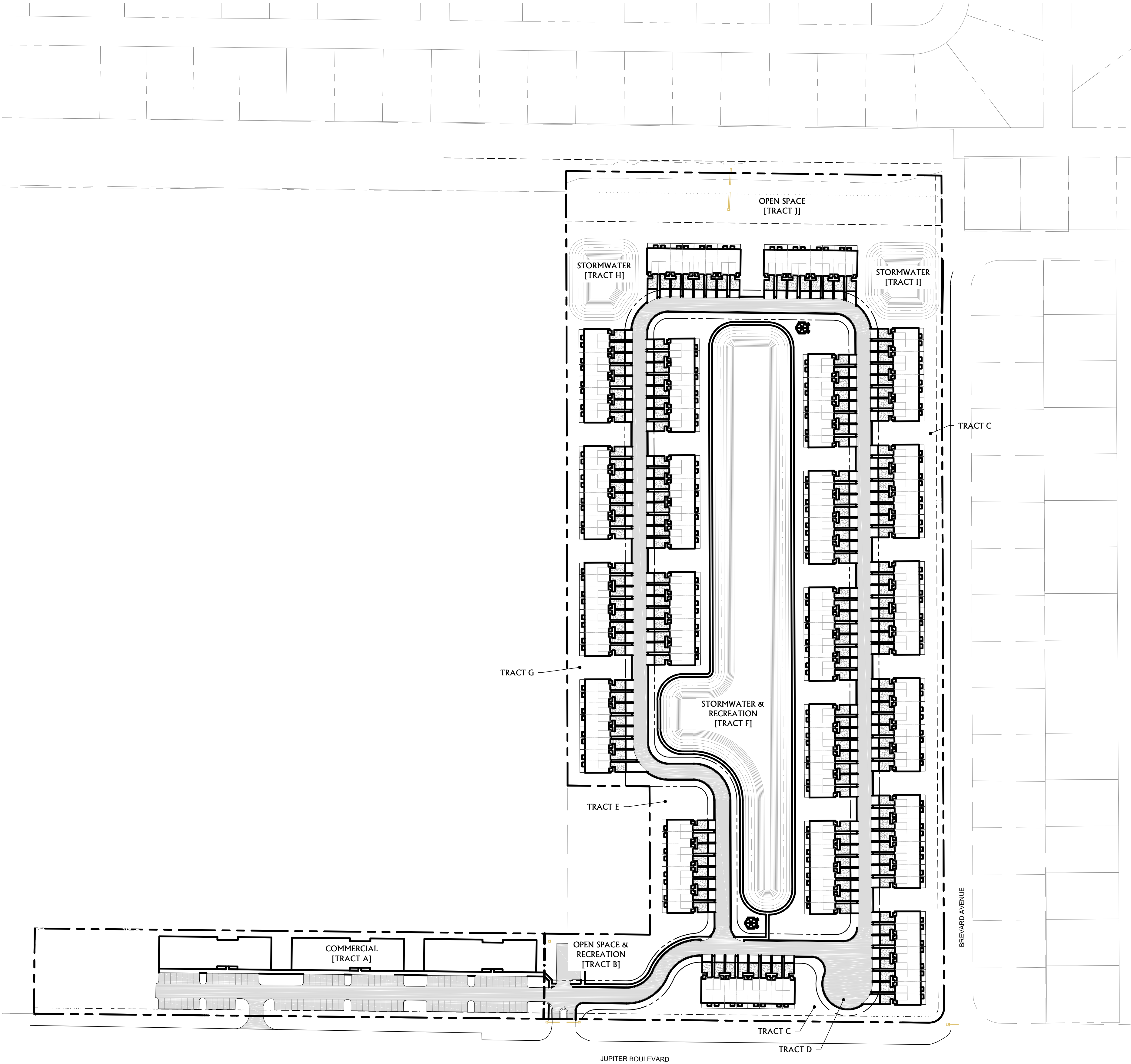
CASE: CP-13-2021 & PD-48-2021

Subject Property

Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE

Current Zoning Classification

RR – Rural Residential District



LEGAL DESCRIPTION:

PARCEL 1:
THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LESS AND EXCEPT, BEING A PART OF THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER THEREOF, THENCE RUN IN AN EASTERLY DIRECTION ALONG THE SOUTHERN BOUNDARY OF SAID PROPERTY A DISTANCE OF 141 FEET, THENCE IN A NORTHERLY DIRECTION PARALLEL TO THE WEST BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET, THENCE WESTERLY ON A PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET TO THE POINT OF BEGINNING AND THE SOUTH 40 FEET OF THE EAST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 165.

ALSO

TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

THE EAST 1/2 OF LOT 16, IN SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR BREVARD COUNTY IN PLAT BOOK 1, PAGE 165, LESS AND EXCEPT THE SOUTH 40 FEET AND, LESS AND EXCEPT MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL NO. 49.

AND

LESS THE WESTERLY 876.49 FEET OF TRACT 'K' AS DESCRIBED ABOVE.

PARCEL 2:
THE WESTERLY 876.49 FEET OF TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TRACT	USE	TRACT AREA	AREA AT N.W.L.	OPEN SPACE CREDIT	MAINTENANCE RESPONSIBILITY	CONSTRUCTION PHASE
A	COMMERCIAL	2.948	0.00	1.062	COMMERCIAL	2
B	OPEN SPACE & RECREATION	0.406	0.00	0.406	MULTI-FAMILY	1
C	OPEN SPACE	1.105	0.00	1.105	MULTI-FAMILY	1
D	RIGHT-OF-WAY	2.948	0.00	0.00	MULTI-FAMILY	1
E	OPEN SPACE	0.147	0.00	0.147	MULTI-FAMILY	1
F	STORMWATER & RECREATION	4.188	2.289	3.616	MULTI-FAMILY	1
G	OPEN SPACE	0.332	0.00	0.332	MULTI-FAMILY	1
H	STORMWATER & RECREATION	0.427	0.211	0.374	MULTI-FAMILY	1
I	STORMWATER & RECREATION	0.430	0.215	0.375	MULTI-FAMILY	1
J	OPEN SPACE & RECREATION W/ MTWCD EASEMENT	1.685	0.00	1.685	MULTI-FAMILY	1

- NOTES:
- RESIDENTIAL LOTS MAKE THE REMAINDER OF THE AREA NOT WITHIN TRACTS (9.244 AC.).
 - TOTAL USABLE COMMON RECREATION & OPEN SPACE REQUIRED IS 5.60 ACRES (25%). OPEN SPACE CREDIT LISTED ABOVE IS CALCULATED AS THE TRACT ACREAGE LESS 25% OF THE ACREAGE OF THE STORMWATER PONDS AND SHALL BE IMPROVED WITH EITHER DOCKS OR PIERS.

SITE INFORMATION

GENERAL STATEMENT

THIS PROPOSED PROJECT INVOLVES CONSTRUCTION AND DEVELOPMENT A PLANNED UNIT DEVELOPMENT (PUD) WITH TOWNHOMES AND COMMERCIAL. INFRASTRUCTURE IMPROVEMENTS CONSIST OF DRAINAGE PIPES AND STRUCTURE, PARKING AREA, DRIVE AISLE AND WATER AND SEWER SERVICE. CONSTRUCTION OF THE FACILITIES WILL INVOLVE CLEARING, GRUBBING, FILLING, EXCAVATION, GRADING AND STABILIZATION. POTENTIAL POLLUTION SOURCES INCLUDE SOIL EROSION AND SILTATION, AND DISCHARGES FROM CONSTRUCTION EQUIPMENT (I.E. OIL, GAS).

APPLICANT/OWNER

SACHS CAPITAL GROUP
2132 DEEP WATER LANE
SUITE 232, NAPERVILLE, IL 60564
PHONE: (---) -----

ENGINEER

MBV ENGINEERING, INC.
1250 W.EAU GALIE BLVD, UNIT L
MELBOURNE, FL 32935
PHONE: (321) 253-1510

SITE ADDRESS

JUPITER BOULEVARD
PALM BAY, FLORIDA

SURVEYOR

WALLACE SURVEYING, CORP.
5553 VILLAGE BOULEVARD
WEST PALM BEACH, FLORIDA 33407
PHONE: (561) 640-4551

CURRENT FUTURE LAND USE

SFR - SINGLE FAMILY RESIDENTIAL

CURRENT ZONING

RR - RURAL RESIDENTIAL

PROPOSED FUTURE LAND USE

MU - MULTI-USE

PROPOSED ZONING

PUD - PLANNED UNIT DEVELOPMENT

TAX PARCEL ID. NUMBER(S)

29-37-06-GK-K
29-37-06-00-751
29-37-06-00-750

TAX ACCOUNT NO.

2925050
2926317
2926316

SITE DATA CALCULATIONS

TOTAL ACREAGE 23.86 AC.
TOTAL UNITS 176 UNITS
DENSITY 8.42 UNITS PER ACRE (15 MAX)

GROSS FLOOR AREA 30,000 SF
FLOOR AREA RATIO (BASED ON COMM AREA) 0.233

BUILDING INFORMATION

TOTAL EXISTING BUILDINGS 2 (RETAIL & STORAGE)
TOTAL PROPOSED BUILDINGS 176 RESIDENTIAL TOWNHOMES
3 COMMERCIAL RETAIL
1 CLUBHOUSE

CLUBHOUSE

COMMERCIAL RETAIL

PARKING INFORMATION

COMMERCIAL 1 SPACE /300 SF @ 30,000 SF = 100 SPACES
PROVIDED (COMMERCIAL) = 100 SPACES

ADA PARKING (REQUIRED) 4
ADA PARKING (PROVIDED) 4

FLOOD ZONE

THE SUBJECT PROPERTY IS LOCATED IN FLOOD ZONE 'X' PER F.I.R.M. PANEL No. 12009C 0660 G, DATED MARCH 17, 2014.

SANITARY SEWER SOURCE

CITY OF PALM BAY SANITARY SEWER SYSTEM

POTABLE WATER SOURCE

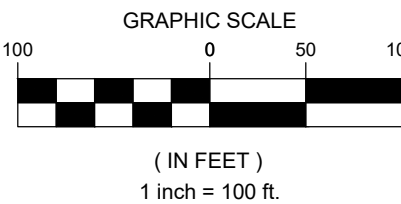
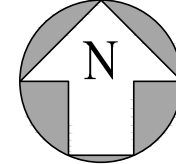
CITY OF PALM BAY WATER SYSTEM

BUILDING SETBACKS

	REQ'D	PROVIDED
FRONT	20'	25.5'
REAR	10'	20.0'
SIDE	5'	10.0'
SIDE INTERIOR	15'	N/A

PLANNED UNIT DEVELOPMENT NOTES:

- NO BUILDINGS, PARKING LOTS OR OTHER STRUCTURES MAY BE LOCATED WITHIN THE PERIMETER SETBACK AREA. HOWEVER, SWIMMING POOLS AND POOL DECKS MAY BE PERMITTED SUBJECT TO THE NORMAL RESIDENTIAL SETBACK REQUIREMENTS.
- WITHIN THE PUD, ALL UTILITIES INCLUDING, BUT NOT LIMITED TO, TELEPHONE, TELEVISION CABLE AND ELECTRICAL SYSTEMS SHALL BE INSTALLED UNDERGROUND.
- THE MINIMUM REQUIREMENTS FOR STREETS OR ROADS, SIDEWALKS, SEWER FACILITIES, UTILITIES AND DRAINAGE SHALL BE IN COMPLIANCE WITH THE REQUIREMENTS OF THE CITY OF PALM BAY SUBDIVISION REGULATIONS. SUBDIVISION SIGNS SHALL BE IN ACCORDANCE WITH CHAPTER 178 OF THE LAND DEVELOPMENT REGULATIONS.
- WALLS AND FENCES SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 170 OF THE LAND DEVELOPMENT REGULATIONS.
- PARKING SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 185 OF THE LAND DEVELOPMENT REGULATIONS.
- LANDSCAPING SHALL MEET ALL THE REQUIREMENTS OF CHAPTER 180 OF THE LAND DEVELOPMENT REGULATIONS.



PUD OVERALL



NOT FOR CONSTRUCTION
PLAN SHEETS ARE PRELIMINARY AND FOR INFORMATION ONLY. PLANS SHOULD NOT BE USED AS A BASIS FOR BIDS.
CONTRACTOR SHOULD ORDER THE OFFICIAL PLANS FROM THE ENGINEER OF RECORD TO ENSURE THAT ANY ACCORDING ARE PROPERLY DISTRIBUTED. PLANS ARE INVALID WITHOUT ENGINEER OF RECORDS SEAL AND SIGNATURE.

SHEET

C-1

20-1013

PRELIMINARY SET



LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042

Landdevelopmentweb@palmbayflorida.org

PRELIMINARY DEVELOPMENT PLAN APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

APPLICATION AMENDMENT TYPE:

- ☒ **PUD** - Planned Unit Development ([Section 185.066](#))
- ☐ **PMU** - Parkway Mixed Use District (Preliminary Design Plan) ([Section 185.057](#))
- ☐ **PCRD** - Planned Community Redevelopment District ([Section 185.055](#))
- ☐ **RAC** - Regional Activity Center District (Preliminary Concept Plan) ([Section 185.056](#))

PROPOSED DEVELOPMENT NAME:

Jupiter Bay

PARCEL ID(S):

29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

TAX ACCOUNT NUMBER(S):

2926316, 2926317, 2925050

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION: (attach additional sheets if necessary):

Port Malabar Unit 10, Tract K, Pb 15 Pg 0010 also Lot 16 of Florida Indian River Land Company Subdivision per Pb 1 Pg 165.

CITY OF PALM BAY, FLORIDA
PRELIMINARY DEVELOPMENT PLAN APPLICATION
PAGE 2 OF 5

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage):

23.96

TOTAL LOTS PROPOSED (list by use):

176 Town Home Lots (20.91 acres) / 3 Commercial Lots (2.95 acres)

DEVELOPER	Greg Sachs - Sachs Capital Group		
Full Address	2132 Deep Water Lane, Suite 232, Naperville, IL 60564		
Telephone	312-543-4440	Email	gsachs@sachscapitalgroup.com
ENGINEER	David Bassford P.E. - MBV Engineering, Inc.		
Full Address	1250 W. Eau Gallie Blvd, Suite H, Melbourne, FL 32935		
Telephone	321-253-1510	Email	davidb@mbveng.com
SURVEYOR	Craig Wallace - Wallace Surveying Corp.		
Full Address	5553 Village Blvd., West Palm Beach, FL 33407		
Telephone	561-640-4551	Email	

PRELIMINARY DEVELOPMENT PLAN CRITERIA FOR SUBMITTAL:

Two (2) copies of the following exhibits shall be attached to the Preliminary Development Plan application. The preliminary plan and supporting documentation **must also be provided on memory drive**.

- A) Vicinity map clearly outlining subject property and showing the relationship between the site and its surrounding area including adjacent streets and thoroughfares.
- B) Preliminary Development Plan that shall contain maps, drawings and narrative, as appropriate, providing the following information:
 - 1) A general plan for the use of all lands within the proposed development. Such plans shall indicate the general location of residential areas (including maximum density and unit types), open space, parks, passive or scenic areas, and nonresidential areas (including maximum building square footage or other intensity maximums).

CITY OF PALM BAY, FLORIDA
PRELIMINARY DEVELOPMENT PLAN APPLICATION
PAGE 3 OF 5

- 2) Proposed name or title of project, the name of the engineer, architect, and developer.
 - 3) North arrow, scale (1 inch = 200 feet or larger), date and legal description of the proposed site.
 - 4) Boundaries of tract shown with bearings, distances, closures, and bulkhead liner. All existing easements, section lines, and all existing streets and physical features in and adjoining the project, and the existing zoning.
 - 5) Proposed parks, school sites, or other public or private open space.
 - 6) Off-street parking, loading areas, driveways and access points.
 - 7) Site data including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary non-residential uses, and the total number of dwelling units, the maximum height of all structures, the minimum setbacks of all structures (and parking areas) and the total area of pervious and impervious surfaces.
 - 8) Delineation of phased development, if applicable.
 - 9) Proposed means of drainage for the site.
- C) A plan of vehicular and pedestrian circulation showing the general locations and right-of-way widths of roads, sidewalks, the capacity of the system and major access points to the external and internal thoroughfare network.
- D) Schematic drawing of the elevation and architectural construction of the proposed primary and secondary nonresidential structures.
- E) A Traffic Study meeting generally accepted engineering practices examining the impact of the proposed development on the surrounding roadway network. (If applicable)
- F) Narrative describing in detail how the proposed Preliminary Development Plan meets the requirements of the Land Development Code and the Palm Bay Comprehensive Plan.

Additional conditions must be met and incorporated into the site plan for the specific type of development requested (PUD, PMU, PCRD, RAC). The additional criteria are listed in the Code of Ordinances and available from staff.

CITY OF PALM BAY, FLORIDA
PRELIMINARY DEVELOPMENT PLAN APPLICATION
PAGE 4 OF 5

**THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS
PRELIMINARY DEVELOPMENT PLAN APPLICATION:**

- ☒ *A \$1,000.00 application fee shall accompany the Preliminary Development Plan application for the purposes of administration. Make Check payable to "City of Palm Bay."
- ☒ Vicinity Map (see Item A).
- ☒ Preliminary Development Plan (see Item B).
- ☒ Vehicular and Pedestrian Circulation Plan (see Item C).
- ☒ Schematic Drawing (see Item D).
- ☒ Traffic Study (see Item E).
- ☒ Narrative (see Item F).
- ☒ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ Citizen Participation Plan. Required when a Preliminary Development Plan application was not submitted. Refer to [Section 169.005](#) of the Land Development Code for guidelines.
- ☒ School Board of Brevard County School Impact Analysis Application (if applicable). The application is obtained from the Planning and Project Management Department of the School Board of Brevard County at (321) 633-1000, extension 11418.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guidelines. Staff will provide a sign template.
- ☒ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

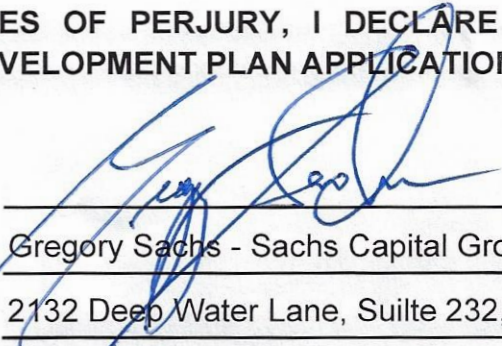
Name of Representative Bruce Moia or David Bassford - MBV Engineering, Inc.

And Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law

CITY OF PALM BAY, FLORIDA
PRELIMINARY DEVELOPMENT PLAN APPLICATION
PAGE 5 OF 5

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING PRELIMINARY DEVELOPMENT PLAN APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.


Owner Signature  Date 6-18-2021
Printed Name Gregory Sachs - Sachs Capital Group
Full Address 2132 Deep Water Lane, Suite 232, Naperville, IL 60564
Telephone 312-543-4440 Email gsachs@sachscapitalgroup.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

CITY OF PALM BAY, FLORIDA
PRELIMINARY DEVELOPMENT PLAN APPLICATION
PAGE 5 OF 5

I, THE UNDERSIGNED UNDERSTAND THAT THIS APPLICATION MUST BE COMPLETE AND ACCURATE BEFORE CONSIDERATION BY THE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY AND CERTIFY THAT ALL THE ANSWERS TO THE QUESTIONS IN SAID APPLICATION, AND ALL DATA AND MATTER ATTACHED TO AND MADE A PART OF SAID APPLICATION ARE HONEST AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING PRELIMINARY DEVELOPMENT PLAN APPLICATION AND THAT THE FACTS STATED IN IT ARE TRUE.

Owner Signature  Date 10/08/2021
Printed Name Gerald Lakin - Identical Investments, LLC
Full Address 2687 NW 84th Way, Cooper City, FL 33024
Telephone 312-543-4440 Email geraldlakin@gmail.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**

June 17, 2021

20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Subdivision per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, and
29-37-06-GK-K.

I, Owner Name: Gregory Sachs - Sachs Capital Group, LB

Address: 2132 Deep Water Lane, Suite 232 Naperville, IL 60564

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Bruce Moia and David Bassford, MBV Engineering Inc.

Address: 1250 W Eau Gallie Blvd, Unit H, Melbourne FL 32935

Telephone: 321-253-1510

Email: brucem@mbveng.com / davidb@mbveng.com

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

(Property Owner Signature)

STATE OF

Tn

COUNTY OF

Marshall

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 18 day of June, 20 21 by

Gregory Sachs

, property owner.

Jessie Spray (Notary)

, Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:



June 17, 2021

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Sub.per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

I, Owner Name: Gerald M Lakin - Identical Investments LLC

Address: 2687 NW 84th Way, Cooper City, FL 33024

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Bruce Moia and David Bassford - MBV Engineering Inc.

Address: 1250 W. Eau Gallie Blvd, Unit H, Melbourne, FL 32935

Telephone: 321-253-1510

Email: brucem@mbveng.com, davidb@mbveng.com

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

Gerald Lakin

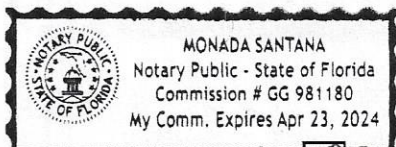
(Property Owner Signature)

STATE OF Florida

COUNTY OF Dade

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 17 day of June, 20 21 by

Gerald Michael Lakin, property owner.



Monada Santana

msf

, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

Florida Driver license

June 17, 2021, 20 21

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company Subdivision per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, and 29-37-06-GK-K.

I, Owner Name: Gregory Sachs - Sachs Capital Group, LB

Address: 2132 Deep Water Lane, Suite 232 Naperville, IL 60564

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law

Address: 1290 Rockledge Blvd, Suite 201, Rockledge, FL 32955

Telephone: 321-608-0892

Email: krezanka@LLR.law

to represent the request(s) for:

Preliminary Development Plan and Comprehensive Plan Amendment

(Property Owner Signature)

STATE OF Tennessee

COUNTY OF Marshall

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of September, 20 21 by

Gregory Sachs, property owner.

My commission expires March 1, 2025

Jennifer Spray Notary Public

☒ Personally Known or ☐ Produced the Following Type of Identification:

June 17, 2021

Re: Letter of Authorization

As the property owner of the site legally described as:

Port Malabar, Unit 10, Tract K, PB 15 Pg 10 also Lot 16 of FL Indian River Land Company
Sub.per Pb 1 Pg 165. Parcel ID's 29-37-06-00-750, 29-37-06-00-751, 29-37-06-GK-K

I, Owner Name: Gerald M Lakin - Identical Investments LLC

Address: 2687 NW 84th Way, Cooper City, FL 33024

Telephone: 312-543-4440

Email: gsachs@achscapitalgroup.com

hereby authorize:

Representative: Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law

Address: 1290 Rockledge Blvd, Suite 201, Rockledge, FL 32955

Telephone: 321-608-0892

Email: krezanka@LLR.law

to represent the request(s) for:

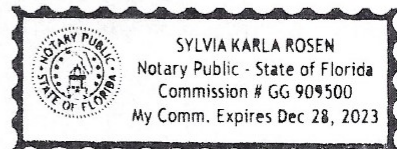
Preliminary Development Plan and Comprehensive Plan Amendment

Gerald Lakin

(Property Owner Signature)

STATE OF Florida

COUNTY OF Dade



The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 15 day of SEPT, 2021 by
GERALD MICHAEL LAKIN, property owner.

Sylvia Karla Rosen

Sylvia Karla Rosen, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

FLDL: L250-293-65-026-0

CASES

CP-13-2021 & PD-48-2021

CORRESPONDENCE

Chandra Powell

From: Angela Burak
Sent: Friday, October 8, 2021 2:46 PM
To: Patrick Murphy; Chandra Powell; Christopher Balter
Cc: Kenny Johnson; Suzanne Sherman; Rosemarie Saavedra
Subject: RE: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

Passing along to Growth/Land Dev as well.



Angela Burak
Administrative Assistant to City Manager

Down to Earth And Up To Great Things™

☎ 321.952.3413 or ext. 3207

angela.burak@palmbayflorida.org

From: Kenny Johnson <Kenny.Johnson@palmbayflorida.org>
Sent: Friday, October 8, 2021 2:38 PM
To: Suzanne Sherman <Suzanne.Sherman@palmbayflorida.org>; Angela Burak <Angela.Burak@palmbayflorida.org>; Terese Jones <Terese.Jones@palmbayflorida.org>; Patricia D. Smith <Patricia.Smith@palmbayflorida.org>
Subject: Fwd: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

Sincerely,
Kenny Johnson
Palm Bay City Councilman Seat 4
321-474-0183

From: asik@roadrunner.com <asik@roadrunner.com>
Sent: Friday, October 8, 2021 2:36 PM
To: City Council
Cc: 'asik@roadrunner.com'
Subject: AGAINST 176 residential town homes at 3255 Jupiter Blvd(Go Daddys Golf Course)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

TO: Palm Bay City Council
From
Raymond Asik Trustee/owner of property 473 Ellington SE, Palm Bay
Address
4112 Ford Lane
Vermilion, OH 44089
PH: 440-967-7761

CE: 440-759-9628

I am totally against the proposed 176 residential Planned Unit Development on property normally for zoned for about 35 housing units.

Amending zoning laws, rezoning this property then jamming 176 units into a normally residential property at 3255 Jupiter BLVD., 24 acres will drastically lower the the property values of the adjoining property of which one is mine. Having over 5 times the houses, 5 times the traffic, excess sewer and drain water issues is unacceptable.

There has to be much better uses for this property which adds to the neighborhood and increases property values should be the goals of Palm Bay City Council. Do the right thing for the neighborhood. Palm Bay residents and reject the plan by MBV Engineering.

There is an informational meeting on October 12, 6p at Franklin T. DeGroodt Public Library, 6475 Minton Road. Palm Bay run by Bruce Moia President, email is brucem@mbveng.com

Thank you,
Raymond (Ray) Asik

Raymond J. Asik
4112 Ford Lane
Vermilion, OH 44089

Oct 25, 2021
PH: 440-967-77613

Subject: Palm Bay Planning and Zoning Board
Cases: CP-13-2021 and PD-48-2021

I am a property owner greatly impacted by the proposed Preliminary Development plan to allow rezoning of Tax Parcels 750 and 751.

The address for my property is
473 Ellington Ave SE Palm Bay, 32909
Property ID: 29 3705-GK-397-12

I am totally against the Cases CP-13-2021 and PD-48-2021 to rezone Tax Parcels 750 and 751 for multiple family residential use and commercial use. Allowing single family residential use is fine with me not the 179 units that is proposed.

Doing a major rezoning of these residential properties to mixed use will cause water drainage, extra traffic and safety issues. Placing all of these units next to schools may also cause lots of safety issues for the schools. Extra heavy traffic is not appropriate for a strictly residential area. 50 or so houses can be built without any changes to the zoning laws.

To me the Palm Bay Planning, Zoning and City Council have more responsibility to all adjoining and future property owners than allowing this proposal to move forward. Single Family Residential use is what Tax Parcels 750 and 751 is and should continue to be allowed. I hope Palm Bay planners and City will realize approving these proposed major zoning changes is a big negative on the local community.

As I stated I AM TOTALLY against this proposal. I cannot attend the meeting but hope my one voice will be heard. I can be contacted at the above address / phone or at my email; asik@roadrunner.com

Thank You,
Ray Asik
PLEASE KEEP ME INFORMED OF THESE CASES.



CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
SPECIAL MEETING 2021-13

Held on Monday, November 15, 2021, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 6:00 p.m.

Mr. Rainer Warner led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present
VICE CHAIRPERSON:	Leeta Jordan	Present
MEMBER:	Donald Boerema	Present
MEMBER:	James Boothroyd	Present
MEMBER:	Richard Hill	Present
MEMBER:	Khalilah Maragh	Present (Late)
MEMBER:	Rainer Warner	Present
NON-VOTING MEMBER:	David Karaffa	Absent
	(School Board Appointee)	

CITY STAFF: Present were Mr. Patrick Murphy, Acting Growth Management Director; Mr. Christopher Balter, Senior Planner; Ms. Chandra Powell, Recording Secretary; Ms. Jennifer Cockcroft, Deputy City Attorney.

ANNOUNCEMENTS:

1. Mr. Weinberg addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.
2. Mr. Balter announced the various City Council hearing dates for the cases on the agenda.

Mr. Weinberg commented on how traffic was a concern that would have to be addressed. It was unlikely that the subject location would be considered for RR use, and Palm Bay was in need of variety in housing.

Motion amended to submit Case CP-13-2021 to City Council for approval, subject to the staff conditions contained in the staff report, an additional vegetative buffer on the north and east property lines, and an 8-foot-high fence on the east property line.

Motion by Ms. Jordan, seconded by Mr. Hill. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case CP-13-2021 would be heard by City Council on January 6, 2022.

6. ****PD-48-2021 - Jupiter Bay - Gregory Sachs, Sachs Capital Group, LP and Gerald Lakin, Identical Investments, LLC (Bruce Moia, P.E. and David Bassford, P.E., MBV Engineering, Inc. / Kim Rezanka, Lacey Lyon Rezanka Attorneys at Law, Reps.) - Preliminary Development Plan to allow a proposed PUD for a 179-unit mixed use development called Jupiter Bay. Tax Parcels 750 and 751, along with Tract K of Port Malabar Unit 10, Section 6, Township 29, Range 37, Brevard County, Florida, containing approximately 23.86 acres. Southwest corner of Jupiter Boulevard SE and Brevard Avenue SE**

Mr. Murphy presented the staff report for Case PD-48-2021. Staff recommended Case PD-48-2021 for approval, subject to the staff comments.

Ms. Kim Rezanka of Lacey Lyon Rezanka Attorneys at Law (representative for the applicant) stated that one-acre lots and the rural uses permitted under the RR, Rural Residential zoning district did not make sense for the subject property. The proposed recreation tract and stormwater tracts were required by the PUD, and amenities included a clubhouse, swimming pool, pavilion, and walking path. The project offered a different housing product for the City, and the commercial acreage was appropriate for the area. The applicant had agreed to provide a vegetative buffer on the north and east property lines and an 8-foot-high fence along the east side of the

property. She stated that Parcel 752 was not owned by the applicant, so the access condition by staff could not be met.

Mr. Murphy stated that providing an access for Parcel 752 was a condition of the Public Works Department to prevent Parcel 752 from being landlocked. Ms. Rezanka was opposed to making the access a condition of approval since the owner of Parcel 752 might legally be obligated to compensate the applicant for access. Mr. Weinberg commented that the owner of Parcel 752 would have to negotiate with the applicant.

Ms. Cockcroft advised the board that the access condition could be eliminated. Ms. Rezanka and Mr. Murphy stated their agreement.

Mr. Murphy stated that the site exhibit showed a secondary access to the commercial parcel; however, the applicant had stated during the land use case that the project would have one access. Ms. Rezanka confirmed that there would be a secondary access as shown on the exhibit. The colored rendering provided during the land use request was for concept.

Mr. Boerema inquired whether a turn lane into the school could be constructed in front of the commercial parcels to help with the school traffic back up. Ms. Rezanka agreed to discuss the suggestion with the traffic engineer. Mr. Murphy added that there was an undesignated green area that could be utilized for a turn lane. The applicant and the City traffic engineer could work on the matter prior to submitting for Final Development Plan review.

Mr. Warner commented that there were potential homeowners that still desired to build on RR land, although not at the subject location.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) was pleased about the walking trail for the project; however, calculating recreation for developments based on total park land in the City would reduce community parks and could eventually result in just Fred Poppe Regional Park to support the population. He was also concerned about the privately-owned townhomes being rented out by the owners.

The floor was closed for public comments, and two items of correspondence were in the file from a resident in opposition to the request.

Motion to submit Case PD-48-2021 to City Council for approval, subject to the staff comments, and elimination of the condition to provide access for Parcel 752.

Motion by Ms. Jordan, seconded by Mr. Boothroyd. Motion carried with members voting as follows:

Aye: Weinberg, Jordan, Boerema, Boothroyd, Hill, Maragh, Warner.

Case PD-48-2021 would be heard by City Council on January 6, 2022.

7. **CP-17-2021 - The Landings at Bayside - John G. Noonan, Bishop, Signatory Diocese of Orlando (David Bassford, MBV Engineering, Inc. and Chip Bryan, Condev Properties, LLC, Reps.) - A small-scale Comprehensive Plan Future Land Use Map amendment from Public/Semi-Public Use to Multiple Family Residential Use. Tract I-1, Bayside Lakes Commercial Center Phase 4, Section 30, Township 29, Range 37, Brevard County, Florida, containing approximately 21.00 acres. Southwest corner of Cogan Drive SE and Osmosis Drive SE**

Mr. Murphy presented the staff report for Case CP-17-2021. Staff recommended Case CP-17-2021 for approval, subject to conditions.

Mr. David Bassford, P.E. with MBV Engineering, Inc. (representative for the applicant) stated that a Citizen Participation Plan (CPP) meeting was held with approximately ten people in attendance. He also met with a couple who could not make the CPP meeting.

Ms. Maragh asked for an overview of the CPP meeting and the issues that were resolved. Mr. Bassford explained how area concerns would be addressed by relocating the recreation facilities away from the tract near Cogan Drive and the existing rear yards. A drainage pipe would be installed between Lots 19 through 21 of the Amberwood at Bayside Lakes development to convey drainage and leave green space, and matched fencing would be installed adjacent to existing fencing.

RESOLUTION 2022-02

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, GRANTING APPROVAL OF A PRELIMINARY DEVELOPMENT PLAN FOR A PROPOSED MIXED-USE DEVELOPMENT TO BE KNOWN AS 'JUPITER BAY PUD' IN RR (RURAL RESIDENTIAL DISTRICT) ZONING, WITH A TENTATIVE ZONING OF PUD (PLANNED UNIT DEVELOPMENT); WHICH PROPERTY IS LOCATED AT THE NORTHWEST CORNER OF JUPITER BOULEVARD AND BREVARD AVENUE, AND LEGALLY DESCRIBED HEREIN; PROVIDING FOR FILING OF THE FINAL DEVELOPMENT PLAN APPLICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, application for a Preliminary Development Plan in RR (Rural Residential District) zoning to permit a proposed 176-unit mixed-use development to be known as 'Jupiter Bay PUD' has been made by Sachs Capital Group, LP and Identical Investments, LLC, and

WHEREAS, the request was duly considered by the Planning and Zoning Board of the City of Palm Bay on November 15, 2021, which voted to recommend to the City Council approval of the application, and

WHEREAS, all provisions applicable to the Preliminary PUD under Chapter 185, Zoning, of the Palm Bay Code of Ordinances, have been satisfied by the applicant, and

WHEREAS, the City Council of the City of Palm Bay has determined that such Preliminary PUD will neither be injurious to adjacent lands nor otherwise detrimental to the public welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council of the City of Palm Bay hereby grants Preliminary Development Plan approval for 'Jupiter Bay PUD' on property zoned RR (Rural Residential District), with a tentative zoning of PUD (Planned Unit Development), which property is legally described herein as Exhibit 'A'.

SECTION 2. The Preliminary Development Plan, incorporated herein as Exhibit 'B', is granted subject to the staff comments contained in the Staff Report, complying with and submitting the following items with a Final PUD application:

- A. The Land Development Division Staff Report which is, by reference, incorporated herein as Exhibit 'C';
- B. A preliminary subdivision plat and Opinion of Title;
- C. Declaration of Covenants and Restrictions establishing development standards;
- D. Construction drawings;
- E. A Concurrency Determination letter from the School Board of Brevard County;
- F. Submission of an Endangered Species Assessment;
- G. Identification of lighting within the neighborhood;
- H. Explore options for providing access for Parcel 752;
- I. Compliance with the conditions of CP-13-2021;
- J. The technical comments generated by the Development Review Staff, incorporated herein as Exhibit 'D', shall be observed and incorporated into the FDP and construction drawings; and
- K. All provisions of the Code of Ordinances of the City of Palm Bay and all other state and federal rules, regulations, and statutes.

SECTION 3. The developer shall have one (1) year from the date of this resolution in which to file a Final Development Plan application. Failure to file said application within one (1) year shall void the Preliminary Development Plan approval unless an extension for filing the Final Development Plan application has been granted by the City Council.

SECTION 4. This resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2022- , of the City Council of the City of Palm Bay, Brevard County, Florida, held on , 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Applicant: Sachs Capital Group, LP and Identical Investments, LLC
Case: PD-48-2021

cc: (date) Brevard County Recording
Applicant
Case File

LEGAL DESCRIPTION:

PARCEL 1:

THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA LESS AND EXCEPT: BEING A PART OF THE WEST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, AS RECORDED IN PLAT BOOK 1, PAGE 165, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER THEREOF, THENCE RUN IN AN EASTERLY DIRECTION ALONG THE SOUTHERN BOUNDARY OF SAID PROPERTY A DISTANCE OF 141 FEET; THENCE IN A NORTHERLY DIRECTION PARALLEL TO THE WEST BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET; THENCE WESTERLY ON A PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID PROPERTY A DISTANCE OF 255 FEET TO THE POINT OF BEGINNING AND THE SOUTH 40 FEET OF THE EAST 1/2 OF LOT 16, SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 165.

ALSO

TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

THE EAST 1/2 OF LOT 16, IN SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, ACCORDING TO THE SUBDIVISION OF SAID SECTION BY THE FLORIDA INDIAN RIVER LAND COMPANY, AS PER PLAT RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR BREVARD COUNTY IN PLAT BOOK 1, PAGE 165, LESS AND EXCEPT THE SOUTH 40 FEET AND, LESS AND EXCEPT MELBOURNE-TILLMAN DRAINAGE DISTRICT CANAL NO. 49.

AND

LESS THE WESTERLY 876.49 FEET OF TRACT 'K' AS DESCRIBED ABOVE.

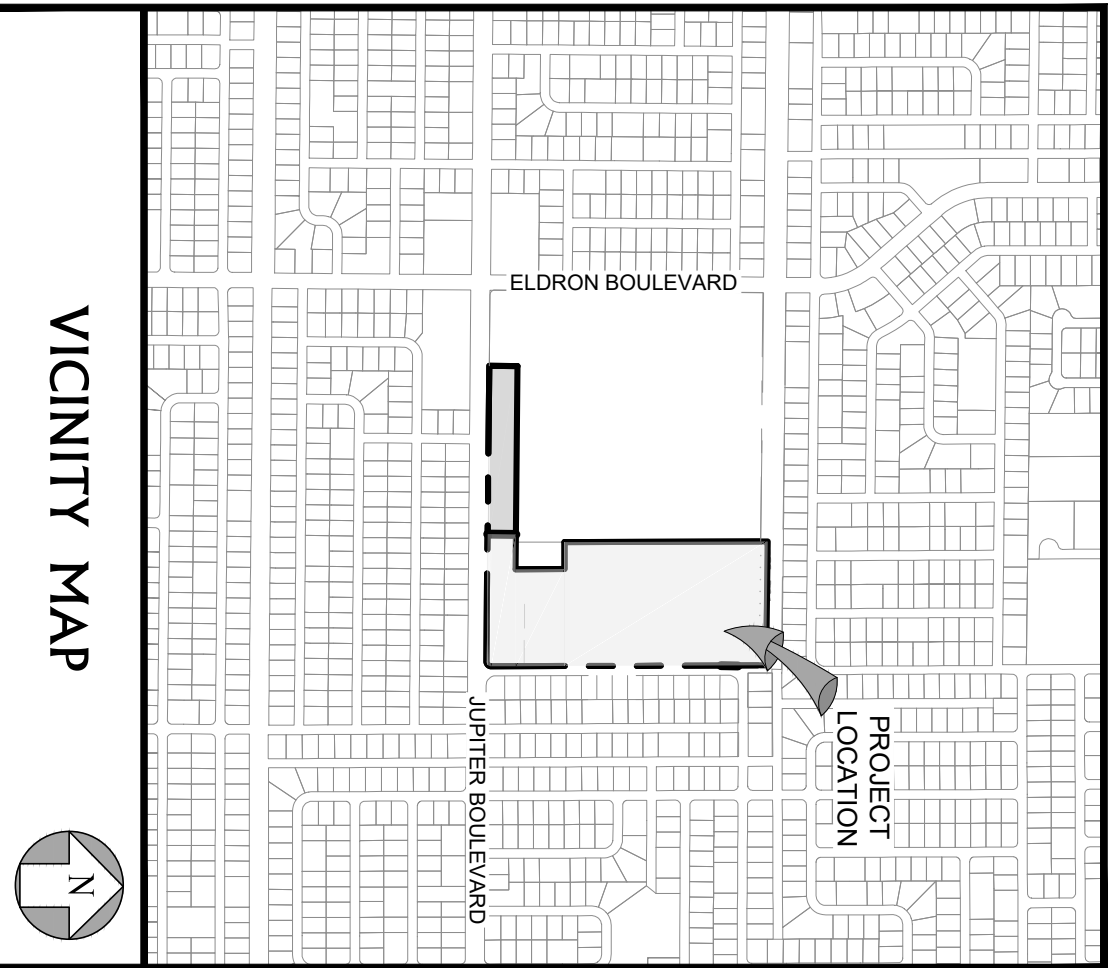
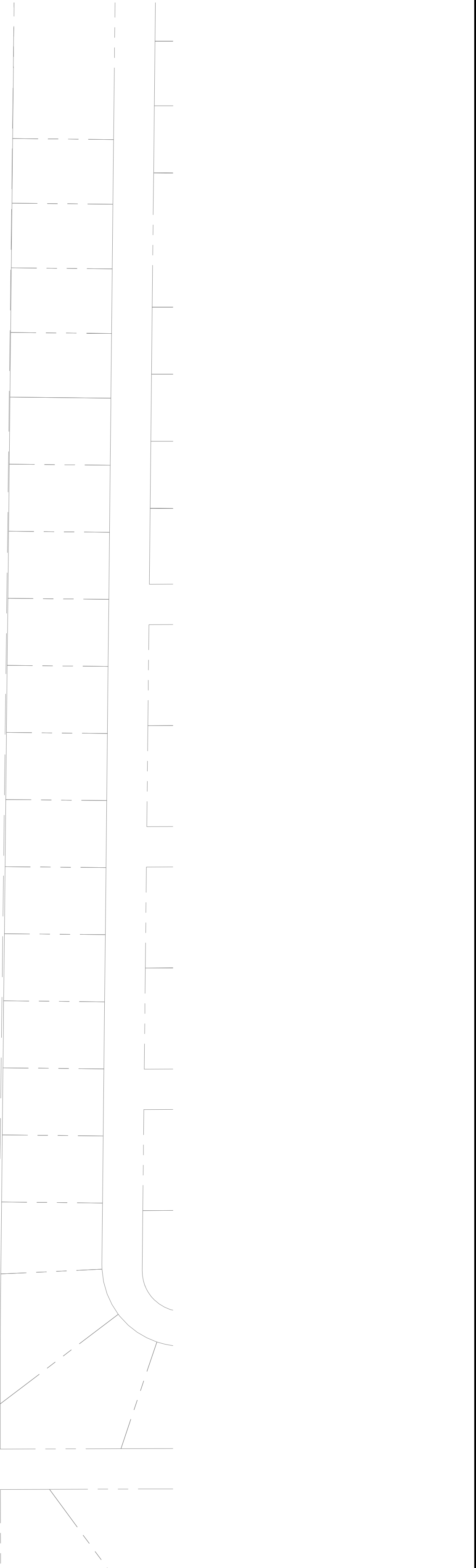
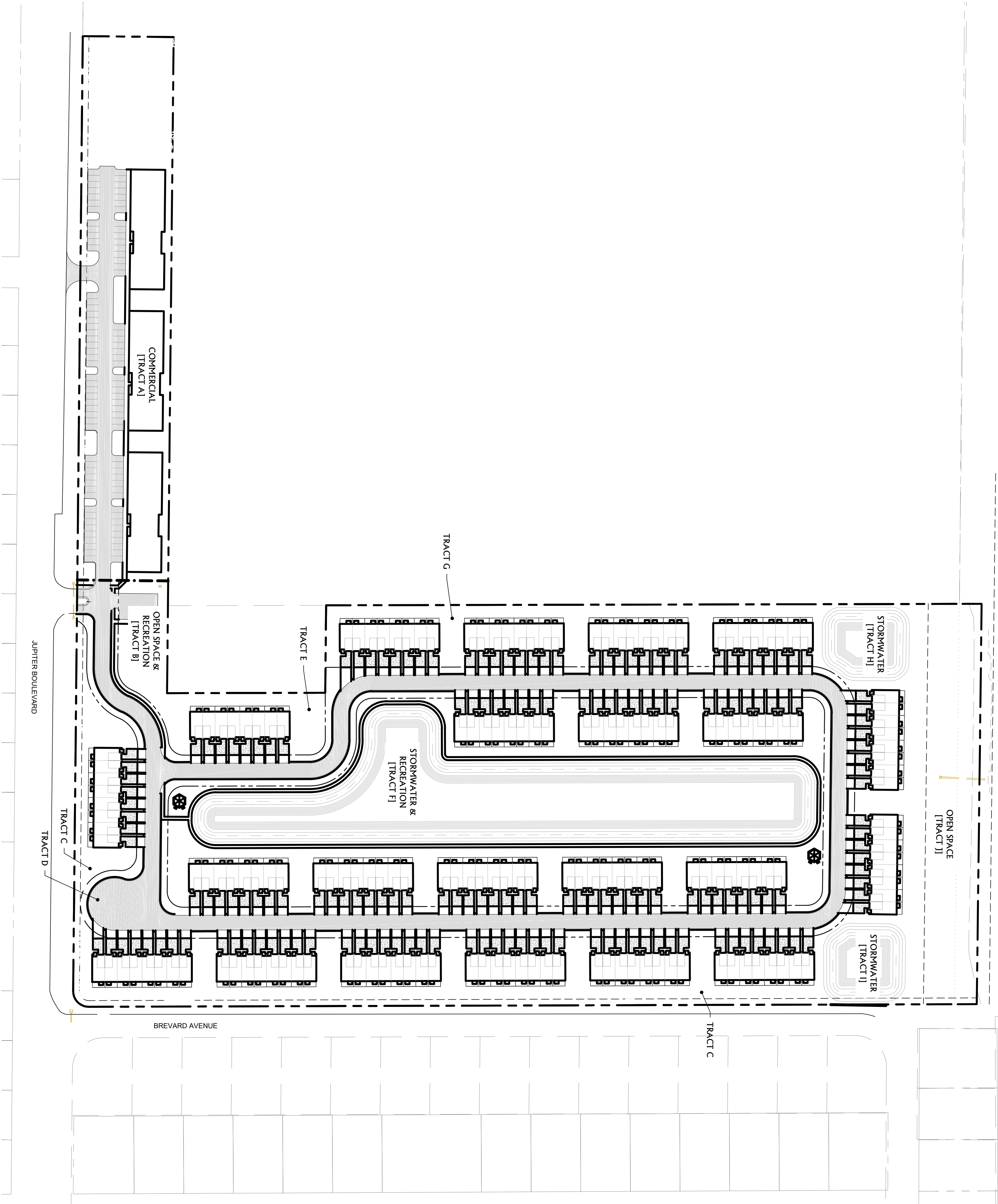
PARCEL 2:

THE WESTERLY 876.49 FEET OF TRACT 'K' OF PORT MALABAR UNIT TEN, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 10 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

Containing 23.86 acres, more or less

City of Palm Bay, Florida
Resolution 2022-02

Exhibit 'B'



SITE INFORMATION	
GENERAL STATEMENT THIS PROPOSED PROJECT INVOLVES CONSTRUCTION AND DEVELOPMENT A PLANNED UNIT DEVELOPMENT (PUD) WITH TOWNHOMES AND COMMERCIAL INFRASTRUCTURE IMPROVEMENTS TO THE EXISTING SUBDIVISION. THE PROJECT IS LOCATED IN THE CITY OF PALM BAY, FLORIDA, AND IS SUBJECT TO THE CITY OF PALM BAY SUBDIVISION REGULATIONS. THE PROJECT WILL INCLUDE THE CONSTRUCTION OF A PLANNED UNIT DEVELOPMENT (PUD) WITH TOWNHOMES AND COMMERCIAL INFRASTRUCTURE IMPROVEMENTS TO THE EXISTING SUBDIVISION. THE PROJECT IS LOCATED IN THE CITY OF PALM BAY, FLORIDA, AND IS SUBJECT TO THE CITY OF PALM BAY SUBDIVISION REGULATIONS.	
APPLICANT/OWNER SACHS CAPITAL GROUP 2132 DEEP WATER LANE SUITE 232, NAPERVILLE, IL 60564 PHONE: (312) 253-1510	ENGINEER MBV ENGINEERING, INC. 1250 W. EAU GALLEE BLVD., SUITE H MELBOURNE, FL 32935 PHONE: (321) 253-1510
SITE ADDRESS JUPITER BOULEVARD PALM BAY, FLORIDA	SURVEYOR WALLACE SURVEYING, CORP. 5833 WALLAGE BOULEVARD MELBOURNE, FLORIDA 32907 PHONE: (321) 544-4551
CURRENT FUTURE LAND USE SFR - SINGLE FAMILY RESIDENTIAL	CURRENT ZONING RR - RURAL RESIDENTIAL
PROPOSED FUTURE LAND USE PUD - PLANNED UNIT DEVELOPMENT	PROPOSED ZONING PUD - PLANNED UNIT DEVELOPMENT
TAX PARCEL ID. NUMBER(S) 23-37-06-04-K 23-37-06-04-J 23-37-06-04-L 23-37-06-04-M 23-37-06-04-N 23-37-06-04-O 23-37-06-04-P 23-37-06-04-Q 23-37-06-04-R 23-37-06-04-S 23-37-06-04-T 23-37-06-04-U 23-37-06-04-V 23-37-06-04-W 23-37-06-04-X 23-37-06-04-Y 23-37-06-04-Z	TAX ACCOUNT NO. 2325550 2325551 2325552 2325553 2325554 2325555 2325556 2325557 2325558 2325559 2325560 2325561 2325562 2325563 2325564 2325565 2325566 2325567 2325568 2325569 2325570 2325571 2325572 2325573 2325574 2325575 2325576 2325577 2325578 2325579 2325580 2325581 2325582 2325583 2325584 2325585 2325586 2325587 2325588 2325589 2325590 2325591 2325592 2325593 2325594 2325595 2325596 2325597 2325598 2325599 2325600 2325601 2325602 2325603 2325604 2325605 2325606 2325607 2325608 2325609 2325610 2325611 2325612 2325613 2325614 2325615 2325616 2325617 2325618 2325619 2325620 2325621 2325622 2325623 2325624 2325625 2325626 2325627 2325628 2325629 2325630 2325631 2325632 2325633 2325634 2325635 2325636 2325637 2325638 2325639 2325640 2325641 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STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Patrick J. Murphy, Acting Growth Management Director

CASE NUMBER

PD-48-2021

PLANNING & ZONING BOARD HEARING DATE

November 15, 2021

PROPERTY OWNER & APPLICANT

Sachs Capital Group, LP (Gregory Sachs, Manager) Represented by Bruce Moia and David Bassford of MBV Engineering, Inc. and Kim Rezanka, Attorney at Law

PROPERTY LOCATION/ADDRESS

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. This property is the former Joe Daddy's Golf Course, at 3255 Jupiter Boulevard SE

SUMMARY OF REQUEST

Preliminary Development Plan (PDP) approval for a 176-unit multi-use development to be called **Jupiter Bay PUD**.

Existing Zoning

RR, Rural Residential

Existing Land Use

Single Family Residential Use

Site Improvements

Vacant, Former Golf Course and Associated Parking Lot

Site Acreage

23.86

SURROUNDING ZONING & USE OF LAND

North

RS-2, Single-Family Residential; Melbourne-Tillman Canal No. 49

East

RS-2, Single-Family Residential; Single-Family Homes

South

RS-2, Single-Family Residential; Single-Family Homes

West

IU, Institutional Use; Jupiter Elementary and Southwest Middle Schools

COMPREHENSIVE PLAN COMPATIBILITY

Yes, subject to approval of Case No. CP-13-2021

BACKGROUND:

The property is located at the NW intersection of Jupiter Boulevard SE and Brevard Avenue SE. Specifically, the subject property is Tax Parcel 750, 751, and Tract K, Section 6, Township 29 south, Range 37 east, Brevard County, Florida. This property is a former golf course and associated parking area. The three (3) parcels total approximately 23.86 acres of land.

On April 1, 2021 (at RCM 2021-09) City Council voted to deny the applicant's request to change the future land use designation of the subject property from Single-family Residential Use to Multiple-family Residential Use and Commercial Use. A companion rezoning application from RR, Rural Residential to the RM-10, Single-, Two-, and Multi-Family Residential and NC, Neighborhood Commercial zoning districts, were also reviewed. According to the City Attorney, since the land use amendment was denied, the rezoning application was rendered moot.

The applicant is currently seeking Preliminary Development Plan (PDP) approval for a Planned Unit Development. The purpose of this request is to allow for the construction of a multi-use development to be called Jupiter Bay PUD. The applicant for this request is Gregory Sachs of the Sachs Capital Group, LP and Gerald Larkin of Identical Investments, LLC. They are being represented by Bruce Moia and David Bassford, of MBV Engineering, Inc. and Kim Rezanka of Lacey, Lyon, and Rezanka Attorneys at Law.

ANALYSIS:

The planned unit development (PUD) is a concept which encourages variation in residential developments by allowing deviation in lot size, type of dwellings, density, lot coverage, setbacks, and open space, from those elements required in any singular zoning classification. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as commercial uses designed to serve the inhabitants of the proposed community.

Specifically, the development plans (C-1 thru C-3) propose 176 townhome units and three (3) commercial buildings, each containing 10,000 square feet of area. According to the exhibit, there are 22 buildings containing 8 townhomes each. The buildings are being placed along an internally looped roadway, to face each other, in a slightly off-set pattern.

A linear retention pond has been deigned within the center of the property, running in a north-south fashion. Additional stormwater ponds are placed in the northern area of the site. All stormwater run-off from the commercial development will be piped to the central pond. Discharge from the system is directed to Melbourne-Tillman Canal No. 49, which runs along the northern boundary of the project. Prior to commencement of construction, the design shall be approved by both the City and the St. Johns River Water Management District.

The internal roadway proposes 24' of traversable pavement, between the abutting driveways of the townhomes buildings. The roadway shall remain private and be maintained by the Homeowner's Association. At the time of FDP submittal, a traffic study will be required. In addition to possible intersection improvements and project turn lanes, the study shall examine the interaction of its proposed driveways with the current traffic patterns.

The Applicant is required to design water & sewer systems of adequate size to accommodate the development and connect to the city's water & sewer system. This design shall be provided upon engineered construction drawings and submitted with the FDP. The applicant may be required to extend or loop service from the existing water and sewer connection points. A Utility Agreement shall be executed prior to construction plan approval.

Section 185.065 of the City's Code of Ordinances requires a Planned Unit Development to permanently set aside and designate on the site plan recreational and/or open space for use by residents of the PUD, equaling 25% of the project site acreage. At 23.86 acres, this minimum set aside shall be 5.97 acres. Such useable space shall in the form of active or passive recreation areas. Common open space shall be improved to the extent necessary to complement the residential uses and may contain compatible and complimentary structures for the benefit and enjoyment of the residents of the PUD.

The PDP proposes a clubhouse and pool at the entrance to the residential development, a gazebo at either end of the main stormwater pond, and a walking trail that encircle this pond. The Preliminary Development Plan (PUD-1) provides a breakdown stating that the minimum set aside has been met. However, this will need to be further vetted with the FDP submittal to ensure the minimum code requirements (and intent) are satisfied. The applicant shall explore the design of site lighting throughout the project, both within the roadway and for pedestrian lighting along the pathway that encircles the pond.

During the plan review process a tree survey identifying all specimen trees shall be provided to determine the exact location and type, for possible preservation. Lastly, staff recommends access be provided from this project to the land-locked property (Parcel ID 29-37-06-00-752).

CONDITIONS:

To receive Preliminary Planned Unit Development approval, the proposal must meet the requirements of Section 185.066 of the City of Palm Bay's Code of Ordinances. Upon review, it appears that the request is in conformance with the applicable requirements of this section, subject to the following items being *submitted with* a Final PUD application:

- A preliminary subdivision plat and Opinion of Title,
- Declaration of Covenants & Restrictions establishing development standards,
- Construction drawings,

- A Concurrency Determination letter from the School Board of Brevard County,
- Submission of an Endangered Species Assessment,
- Identification of lighting within the neighborhood,
- Provide access for Parcel 752; and
- Compliance with the conditions of CP-13-2021.

Lastly, technical staff review comments are attached to this report and shall be incorporated.

STAFF RECOMMENDATION:

Case PD-48-2021 is recommended for approval, subject to the staff comments.

TECHNICAL COMMENTS

CASE PD-48-2021 – JUPITER BAY PUD

PUBILC WORKS (Mehul Parekh, PE, Public Works Director):

Driveway and right of way utilities:

1. Provide sidewalk along side street and frontage with off-site to on site connections commercial properties.
2. Traffic study and roadway improvement warrant analysis are required.
3. Any land locked property must be provided access with development.
4. Additional MTWCD right of way/ easement for existing canal.
5. Cross access, drainage and utilities agreements.
6. HOA or POA documents shall be provided for review.

Survey:

Boundary

1. Further development review will require tree locations and topographic survey.
2. Per ORB 3074 PGS 2366 - 2526 (specific page 2488) The Melbourne Tillman Water Control District has ownership of the North 36 feet of the parcel. For further information contact City Surveyor 321.952.3400 X6438.
3. Please clarify the exact description of the found W.C.s.
4. Please show both invert elevations of the cross drain at Jupiter and Brevard.
5. Please ensure legal access, through easement, of the land locked parcel (29-37-06-00-752).
6. Please use City of Palm Bay vertical datum from database. Provided upon request.
7. Please verify the less and except of the West half of Lot 16 includes the South 40 feet of the East half of Lot 16.
8. Further Comments to follow.

Engineering:

Ch 174 City Code of Ordinances and Ch 62-330 F.A.C. design and performance criteria and specifications shall be met.

Transportation impact fees will be assessed based on the final number of dwelling units

A peak AM and PM trip generation analysis shall be provided. Should AM or PM peak trips exceed 100 trips a transportation impact study would be required.

Public Works reserves the right to make other applicable comments during the site plan review process.

UTILITIES (Christopher Little, PE, Utilities Director):

The Utilities Department has no objection to the proposed 176 Multi-Family residential units and 3 commercial parcels PUD.

Upon development of the site, the following shall apply for connection to the City's water and sewer utilities system:

1. The applicant/owner, at their expense, will be required to design, permit, install, inspect and test water & sewer systems of adequate size to accommodate the development and to connect to the City's water & sewer system. [§ 200.11(D)(1) - On-Site Facilities].
2. The applicant/owner may be required to extend and/or loop service from the existing water and sewer connection points [§ 200.11(D)(2) -Off-Site Facilities].
3. The applicant/owner will be responsible for the property's hydraulic share for the utilities. Oversizing of utilities at the request of the Utilities Department will be subject to a refunding agreement or refundable advance [§ 200.1(D) & (E)]. The City of Palm Bay's 2017 Wastewater Master Plan & 2017 Water Master Plan, both of which are available upon request, identify proposed mainline extensions with the City's current pipe sizing requirements.
4. A City of Palm Bay "Utility Agreement" shall be executed between the Property Owner and the City. All Utility impact/connection charges noted in the "Utility Agreement" must be paid as outlined in the terms and conditions of the Utility Agreement. All fees are subject to change annually on October 1. The Property Owner shall submit a certified copy of the property deed as verification of ownership as part of the Utility Agreement.
5. All utility construction, materials, and testing shall be in accordance with the latest revision of the Palm Bay Utility Department Policies, Procedures and Standards Handbook and the Standard Detail Drawings. Prior to any construction, all required FDEP Permit applications for the Water and Sanitary Sewer Construction shall be processed through and copied of the Permits filled with the Utilities Department.

BUILDING-FIRE (Michael Bloom, CFPS, Fire Plans Examiner):

1. Subdivisions shall meet all requirements of the currently adopted Florida Fire Prevention Code (FFPC) 7th edition, Florida Administrative Code (FAC) Florida State Statute (FSS) and City of Palm Bay Ordinances (COPBO).

2. (FFPC 1:18.4.5.1.1) The minimum fire flow and flow duration requirements for one- and two-family dwellings having a fire flow area that does not exceed 5000 ft²(464.5 m²) shall be 1000 gpm (3785 L/min) for 1 hour.
3. (FFPC 1-18.4.5.2.1) Fire flow and flow duration for one- and two-family dwellings having a fire flow area in excess of 5000 ft² (334.5 m²) shall not be less than that specified in Table 18-4.5.1.2.
4. Townhouses shall meet all requirements of (FSS 481.203(16)) or they shall be protected by a fire sprinkler system per FFPC and COPBO.
5. (FFPC 1-18.2.3.5.4) Dead-end fire department access roads in excess of 150 ft. (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

BUILDING-FLOODZONE (James Williams, CFM, Floodplain Coordinator):

Floodzone X, No FEMA CLOMR/LOMR application required.

ORDINANCE 2021-89

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE III, ADMINISTRATION, CHAPTER 37, GROWTH MANAGEMENT DEPARTMENT, BY REMOVING THE CODE COMPLIANCE DIVISION FROM THE DEPARTMENTAL COMPOSITION; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title III, Administration, Chapter 37, Growth Management Department, Section 37.03, Departmental Composition, is hereby amended and shall henceforth read as follows:

“SECTION 37.03 ~~DEPARTMENTAL COMPOSITION~~ >>DUTIES AND RESPONSIBILITIES<<.

(A) *Land Development Division.*

(1) Maintains the City of Palm Bay's Comprehensive Plan, revisions to the Land Development Code, administrative review of site plans, tracks Census data, and provide data and analysis. Staff members of the Division serve as liaison to the Planning and Zoning Board/Local Planning Agency.

~~(B) Code Compliance Division.~~

~~(1) Effectively upholds the Palm Bay Code of Ordinances, while making every effort to bring about voluntary compliance of code violations. Staff members of the Division serve as liaison to the Code Enforcement Board.”~~

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021-XX, held on _____, 2021; and read in title only and duly enacted at Meeting 2021-XX, held on _____, 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.

ORDINANCE 2021-90

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE III, ADMINISTRATION, CHAPTER 40, BUILDING DEPARTMENT, BY INCLUDING THE CODE COMPLIANCE DIVISION UNDER THE DUTIES AND RESPONSIBILITIES; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title III, Administration, Chapter 40, Building Department, by amending Section 40.03, Duties and Responsibilities, which shall henceforth read as follows:

“Section 40.03 DUTIES AND RESPONSIBILITIES.

>>(A)<< The Building Department is responsible for the review and issuance of permits for new and existing buildings in accordance with the Florida Building Code to ensure construction meets the requirements of all state, city and fire prevention codes for the safety and welfare of the citizens. The Floodplain Administrator within the department oversees the FEMA CRS program.

>>(B) *Code Compliance Division.*

(1) Effectively upholds the Palm Bay Code of Ordinances, while making every effort to bring about voluntary compliance of code violations. Staff members of the Division serve as liaison to the Code Enforcement Board.”<<

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2021-XX, held on _____, 2021; and read in title only and duly enacted at Meeting 2021-XX, held on _____, 2021.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

DATE: 1/6/2022

RE: Adoption of Minutes: Regular Council Meeting 2021-31; December 2, 2021.

ATTACHMENTS:

Description

Minutes - RCM 2021-31

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2021-31

Held on Thursday, the 2nd day of December 2021, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 7:00 P.M.

Pastor Luis Lugo, Iglesia El Sinai, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

MAYOR:	Rob Medina	Present
DEPUTY MAYOR:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER:	Donny Felix	Present
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
DEPUTY CITY CLERK:	Terri Lefler	Present

CITY STAFF: Joan Junkala-Brown, Deputy City Manager; Charleena Cox, Human Resources Director; Patrick Murphy, Acting Growth Management Director; Valentino Perez, Chief Building Official; Chris Little, Utilities Director.

ANNOUNCEMENT(S):

Deputy Mayor Johnson announced the following vacancies and terms expiring, and solicited applications for same:

- 1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student' member position).++**
- 2. One (1) vacancy on the Youth Advisory Board (represents 'adult member, 30 years and older' position).++**
- 3. One (1) term expiring on the Bayfront Community Redevelopment Agency (represents 'at-large' position).++**
- 4. Four (4) terms expiring on the Disaster Relief Committee.+**

AGENDA REVISION(S):

1. Ms. Sherman advised of a revision to Resolution 2021-70 (Item 4, under Consent Agenda), which reflected the waiver of pre-application for all commercial projects regardless of zoning districts.

PROCLAMATIONS:

The proclamations were read.

1. **Proclamation: Family Christmas Extravaganza Day - December 18, 2021.**
2. **Proclamation: Cyberbullying/Cyber Stalking Prevention Month - December 2021.**
3. **Proclamation: Recognizing The Titans, Eastern Florida State College Women's Soccer Team - winners of the NJCAA Division I National Championship. (Deputy Mayor Johnson)**

PRESENTATIONS:

1. **Mehul Parekh, Public Works Director - Public Works Department overview.**

Mr. Parekh provided an overview of the duties and responsibilities of the department. He gave an update on the Road Paving Program and stormwater improvements and advised of additional staffing needs for the department. Mr. Parekh said improvements were needed to the yard at the Public Works facility. There was no hurricane-safe building, lack of covered storage for equipment, excess of small storage units which made it difficult to find tools and equipment. He was currently working on a proposed site plan which would include an additional building and parking lot. Mr. Parekh answered further questions posed by councilmembers.

Mayor Medina commented on the staffing needs and asked about the timeframe from someone being hired to the first day of employment. Ms. Cox said the timing would vary due to background checks and when information was received from the state. She said the estimated time was between two weeks and one month.

Mr. Felix said there was mention of a revised list of exemptions as it related to stormwater. Mr. Parekh confirmed same and said the published list had some discrepancies and the consultant provided a revision to be presented to Council on December 16th.

Mr. Felix questioned the need for two positions to handle the Republic Services contract. Mr. Parekh responded that there used to be a Business Operations Manager that handled the contract so that position, along with a support person, would be needed. Mr. Felix did not feel more taxpayer dollars should be used towards positions specifically for that contract. Republic Services should be performing their contract and providing excellent customer service, and Republic Services should be hiring one or two people as liaisons to the city. Mayor Medina understood that Republic Services was a huge contract for the city but questioned how many active contracts were being managed by the city. Ms. Sherman said that each department was responsible for handling contracts related to their services. Mayor Medina asked how many employees managed the Waste Management contract. Ms. Sherman said that the Waste Management contract did not have the level of detail as Republic Services, but she wanted to make sure that staff was setting up the city for success by ensuring that the vendor was being held accountable and adhering to every provision of the contract. She clarified that the requested position would monitor more contracts than just Republic Services.

PUBLIC COMMENT(S)/RESPONSE(S): (Non-agenda Items Only)

1. Anne Marie Burrows, resident, said that the city used to have a local drop-off site for residents to dispose of household hazardous waste. She asked Council to consider establishing a site again.

Ms. Sherman responded that the landfill on Sarno Road in Melbourne was the drop-off location for hazardous materials.

2. Terri Smith, Truth Revealed Ministries, said their facility that was used as a cold night shelter for the homeless had burned down. There were no other cold night shelters in Palm Bay. She hoped for a permanent solution for a homeless shelter and that affordable housing would become a priority for City Council. Ms. Smith asked that citizens visit the church's website and donate to the restoration fund.

Mayor Medina asked about The Source and the use of their Dignity Bus. Mrs. Junkala-Brown said upgrades were still being made to their second bus. She would follow-up and provide an update to Council.

PUBLIC HEARING(S):

1. **Ordinance 2021-72, vacating a portion of the rear public utility and drainage easement located within Lots 38 and 39, Block 509, Port Malabar Unit 12 (Case VE-10-2021, Luis Sanchez), final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-72. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

2. Ordinance 2021-77, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located south of and adjacent to Coconut Street, in the vicinity west of Emerson Drive, from Public/Semi-Public Use to Single-Family Residential Use (11.91 acres) (Case CP-16-2021, Hossein Rezvani), only one reading required.

The Planning and Zoning Board recommended approval of the request, subject to staff comments.

The City Attorney read the ordinance in caption only. The public hearing was opened. Attorney George Boris and Alexander Fundora, representatives for the applicant, presented the request to Council.

Mr. Foster asked if the community would have a homeowner's association. Mr. Fundora answered in the negative and said the road would be dedicated to the city. Mr. Foster said his concerns were related to traffic and lighting and asked if traffic issues had been addressed. Mr. Fundora said the traffic would be addressed during the design phase but there would be two entrances and two exits, and streetlights were required.

Mr. Felix felt the project was compatible with the area and supported the request.

Randall Olszewski, resident, expressed concern with the application. He said that the laws had changed with regard to small scale and large-scale amendments. He understood this application was in process when the law changed to reflect that small scale amendments were now for fifty (50) acres or less instead of ten (10) acres or less but felt a new application should have been completed since it showed it as a large-scale amendment. He added that the application fee had been waived and questioned staff's reasoning for doing so, as well as why only one reading of the ordinance was required.

Andrea Cannizzano, resident of Coconut Street, spoke against the request as it would devalue her home, the ingress/egress would be in front of her newly built home and front yard view would be the backyards of the new community. She added that there were

issues with excessive speeding and traffic on Coconut Street. Ms. Cannizzano said a privacy fence surrounding the community should be required, along with additional entrances and exits.

Bill Battin, resident, supported the request because the project proposed thirty-eight (38) homes on a property of twelve (12) acres.

Donna O'Conner, resident of Coconut Street asked if the drainage for the new community would help with the drainage on Coconut Street; said speeding was an issue in the area; and asked if sewer would be available to the surrounding neighborhood since the new community was getting water and sewer.

The representatives addressed the comments. They said traffic would be alleviated as the community would have two entrances, but they had no control over any existing traffic issues, and they would work with the city to mitigate as much flooding as possible. Fencing had not been considered but the project was still in its planning stages and the proposed homes along Coconut Street would not face the same direction as the existing homes. They would face east and west, except for a few homes at the end of the block.

Deputy Mayor Johnson asked that the applicant be a good neighbor and reach out to the affected homeowners, so they were aware of what was being proposed.

Mr. Murphy explained the waiver of the fees. He said that back in 2007, the applicant went through the process and had paid all of the necessary fees, but the city did not transmit the request to the state as was required for large-scale amendments. It was no fault of the applicant and staff decided to waive the fees. Mr. Murphy provided further details on the project.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2021-77, subject to staff comments. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

3. Ordinance 2021-78, rezoning property located west of and adjacent to Babcock Street, in the vicinity south of Foundation Park Boulevard, from CC (Community Commercial District) to GC (General Commercial District) (6.28 acres) (Case Z-45-2021, Roth Freedom 2010 LLC and Linda N. Shah), first reading. (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Kiel Causby, Kimley-Horn Engineering and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve Ordinance 2021-78. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

4. Ordinance 2021-79, granting approval of a Final Development Plant for a PUD (Planned Unit Development) zoning residential subdivision to be known as 'Gardens at Waterstone Phase III' on property located in the vicinity west of Mara Loma Boulevard and south of Melbourne Tillman Water Control District Canal 38 (47.99 acres) (Case FD-47-2021, Waterstone Farms, LLC), first reading. (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request, subject to staff comments contained in the Staff Report being addressed upon submission of the administrative construction plans as follows:

- Fully engineered construction drawings;
- A Subdivision Plat meeting Chapter 177 of Florida State Statute requirements and a title opinion;
- The technical comments generated by the Development Review Staff shall be observed and incorporated into the engineered construction drawings; and
- No roads shall be accepted by the City of Palm Bay for operation and maintenance until and unless the Developer requests acceptance through the process promulgated in Chapter 182 of the City of Palm Bay's Code of Ordinances. Upon commencement of said process, staff will determine if acceptance of any roads would provide a public benefit and that current City of Palm Bay construction standards are met.

The City Attorney read the ordinance in caption only. The public hearing was opened. Jake Wise, CEG Engineering and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve Ordinance 2021-79, subject to the staff comments contained in the Staff Report. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

5. Resolution 2021-68, amending Resolution 2003-61, by granting modification to the conditional use to allow expansion for an automated warehouse in CC (Community Commercial District) zoning, on property located south of and adjacent to Malabar Road, in the vicinity between Holiday Park Boulevard and Cassia Avenue (28.97 acres) (Case CU-42-2021, Wal-Mart Stores East L.P.) (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request, subject to the staff comments contained in the Staff Report.

The City Attorney read the resolution in caption only. The public hearing was opened. Andrew Petersen, Bowman Consulting Group and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Resolution 2021-68, subject to the staff comments contained in the Staff Report. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

6. Resolution 2021-69, amending Resolution 2012-45, by granting modification to the conditional use to allow expansion of a permitted use on a parcel of ten (10) or more acres of area for a recreational vehicle detail and delivery shop in CC (Community Commercial District) zoning, on property located east of and adjacent to Culver Drive, in the vicinity north and south of Centre Lake Drive (24.05 acres) (Case CU-46-2021, Giant Recreation World). (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request, subject to the following conditions:

- A vegetative buffer along the western property line and a row of canopy trees along the southern property line, adjacent to the proposed development;
- The new building shall be fire sprinklered;

- At the time of site plan submittal, the applicant shall work with the City's Engineering Division to establish a drainage easement along the southern property line; and
- Preserve the existing trees indicated on the conceptual plan.

The City Attorney read the resolution in caption only. The public hearing was opened. Jake Wise, CEG Engineering and representative for the applicant, presented the request to Council. He answered questions posed by councilmembers.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt Resolution 2021-69, subject to the staff's comments and conditions. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

7. Ordinance 2021-80, amending the Code of Ordinances, Chapter 64, Business Improvement District, by repealing the Chapter in its entirety, first reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. Ms. Sherman presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve Ordinance 2021-80. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

CONSENT AGENDA:

All items of business under the 'Consent Agenda' heading were enacted by the following motion:

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, that the Consent Agenda be approved as presented with the removal of Items 4, 7, and 11, from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

1. Award of Bid: Culvert pipe replacement, Country Club Units 1-10 – IFB 01-0-2022 – Public Works Department (Loren Jock Trucking, Inc. - \$724,656).

Staff Recommendation: Approve the award for culvert pipe replacement, Port Malabar Country Club Units 1-10, with Loren Jock Trucking, Inc. (Stuart), in the amount of \$724,655.50; and approve the appropriation of funds on the next scheduled budget amendment.

The item, considered under Consent Agenda, was approved as recommended by City staff.

2. Contract: Neptune water meters and parts – Utilities Department (Ferguson Waterworks – \$800,000 (annual estimate, ‘as needed’ basis)(sole source)).

Staff Recommendation: Approve the sole source purchase of Neptune water meters and parts with Ferguson Waterworks (Newberry), in the estimated annual amount of \$800,000, on an ‘as needed’ basis, from January 1, 2022, through December 31, 2022.

The item, considered under Consent Agenda, was approved as recommended by City staff.

3. Miscellaneous: North Regional Water Treatment Plant rehabilitation, Change Order 3 – Utilities Department (Eau Gallie Electric, \$90,942); appropriation of funds from Undesignated Fund Balance.

Staff Recommendation: Approve Change Order 3 for the North Regional Water Treatment Plant rehabilitation with Eau Gallie Electric (Melbourne), in the amount of \$90,942.05; and approve the appropriation of funds on the next scheduled budget amendment in the amount of \$29,103.

The item, considered under Consent Agenda, was approved as recommended by City staff.

4. Resolution 2021-70, authorizing a temporary building permit fee rebate program and pre-application fee waiver.

Staff Recommendation: Adopt the resolution authorizing the Building Permit Fee Rebate Program and waiver of the Growth Management Pre-Application Conference Fee as an economic incentive for commercial development within the city.

The City Attorney read the resolution in caption only.

Bill Battin, resident, agreed with the incentive being for all throughout the city rather than certain zoning districts. He asked how long the program would be in place since it was

temporary. Ms. Sherman responded that it was through the end of this fiscal year, September 30, 2022.

Ms. Sherman advised of a correction to the third line of the first Whereas clause of the resolution: building impact fees should read as building fees.

Motion by Deputy Mayor Johnson, seconded by Mayor Medina, to adopt Resolution 2021-70, with the correction as stated by the City Manager. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

5. Ordinance 2021-81, amending the Code of Ordinances, Chapter 35, Finance Department, by repealing the Chapter in its entirety, first reading.

The City Attorney read the ordinance in caption only.

The item, considered under Consent Agenda, was approved as recommended by City staff.

6. Ordinance 2021-82, amending the Code of Ordinances by creating Chapter 35, to be titled 'Finance Department', first reading.

The City Attorney read the ordinance in caption only.

The item, considered under Consent Agenda, was approved as recommended by City staff.

7. Consideration of entering into negotiations with Palm Bay Medical Office Corporation for the purchase of condominium office buildings located at 336 and 342 Cogan Drive to serve as satellite offices for the Building Department to service customers in south Palm Bay.

Staff Recommendation: Authorize staff to negotiate the purchase of 336 and 342 Cogan Drive SE and bring forth the final purchase agreement for consideration at a future City Council meeting.

Deputy Mayor Johnson questioned the need for these buildings when plans for Building E at the City Hall campus were underway. Mr. Perez said it would serve the residents in the south area of the city and add to the government hub that already existed in that area. Deputy Mayor Johnson asked if there was any other purpose for the buildings once the

Building E was constructed. Mr. Perez said there were options due to the expansion in that area. The city could keep those buildings for expansion of future services or sell them at some point in the future.

Mayor Medina asked about the current lease at the Winn Dixie Shopping Center. Mr. Perez said it was a three-year lease and it was currently in the first year.

Councilmembers spoke in favor of the request.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to authorize staff to negotiate the purchase of 336 and 342 Cogan Drive SE and bring forth the final purchase agreement for consideration at a future City Council meeting. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

8. Consideration of an Opioid Participation Agreement (McKesson Corporation).

Staff Recommendation: Approve the Opioid Participation Agreement with McKesson Corporation and authorize the City Manager to execute the Election and Release.

The item, considered under Consent Agenda, was approved as recommended by City staff.

9. Consideration of an Opioid Participation Agreement (Janssen/Johnson and Johnson).

Staff Recommendation: Approve the Opioid Participation Agreement with Janssen/Johnson and Johnson and authorize the City Manager to execute the Election and Release.

The item, considered under Consent Agenda, was approved as recommended by City staff.

10. Consideration of appropriation of Fund Balance from the General Fund (\$70,000) and Building Fund (\$34,000) to cover the cost of credit card processing fees.

Staff Recommendation: Authorize the appropriation of Fund Balance from the General Fund, in the amount of \$70,000, and the Building Fund, in the amount of \$34,000, to cover the cost of credit card processing fees.

The item, considered under Consent Agenda, was approved as recommended by City staff.

11. Consideration of appropriating funds from the Undesignated Fund Balance for fuel for the North Regional Water Treatment Plant replacement generator (\$16,200).

Staff Recommendation: Authorize the appropriation of funds from the Undesignated Fund Balance, in the amount of \$16,200, for fuel for the North Regional Water Treatment Plant replacement generator.

Nathan White, resident, said the request did not include fuel. He asked what happened to any remaining fuel in the previous tank and how there was a budget for the tank, but not for the fuel. Mr. Little responded that previous fuel had been removed, cleaned, and would be reused. He said it was an oversight by staff that the fuel was not accounted for in the budget.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to authorize the appropriation of funds from the Undesignated Fund Balance, in the amount of \$16,200, for fuel for the North Regional Water Treatment Plant replacement generator. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

12. Consideration of expenditures from the Palm Bay Police Department's Law Enforcement Trust Fund for donation to the 2021 Reindeer Run (\$6,578).

Staff Recommendation: Approve the expenditure of funds as specified in the City Manager's memorandum.

The item, considered under Consent Agenda, was approved as recommended by City staff.

13. Consideration of travel and training for specified City Employees (Fire Department).

Staff Recommendation: Approve the travel and training as specified.

The item, considered under Consent Agenda, was approved as recommended by City staff.

14. Consideration of travel and training for specified City employees (Police Department).

Staff Recommendation: Approve the travel and training as specified.

The item, considered under Consent Agenda, was approved as recommended by City staff.

15. Consideration of travel and training for specified City employees (City Attorney's Office).

Staff Recommendation: Approve the travel and training as specified.

The item, considered under Consent Agenda, was approved as recommended by City staff.

UNFINISHED AND OLD BUSINESS:

1. Councilmember appointments to the Charter Review Commission.

Council appointed members as follows:

Mayor Medina	Kenneth Delgado David Meyers
Deputy Mayor Johnson	David Jones Jordin Chandler
Mr. Foster	William Capote Phil Moore
Mr. Felix	Phil Weinberg Jeffrey McLeod

2. Appointment of two (2) members to the Charter Review Commission (represents 'at-large' positions).

The individuals were rated by the City Council due to the number of applications exceeding the number of vacant positions. Number 1 represented the first choice of each councilmember and so on. The individual(s) receiving the lowest number(s) to the position(s) were considered for appointment to the board.

Motion by Deputy Mayor Johnson, seconded by Mayor Medina, to appoint Aaron Parr and Kay Maragh to the 'at-large' positions on the Charter Review Commission. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

NEW BUSINESS:

1. Consideration of scheduling a special meeting for December 2021.

Council concurred to schedule a special Council meeting for Thursday, December 9, 2021, at 6:00 p.m., for follow-up discussion regarding American Rescue Plan Act funds.

COUNCIL REPORTS:

Councilmembers addressed various subjects.

1. Mr. Foster made the following reports:

a. Requested that future tree lighting ceremonies be held at the City Hall campus;
and

b. Asked Council to consider utilizing American Rescue Plan Act (ARPA) funds for a temporary cold night shelter since the only code night shelter in Palm Bay located at Truth Revealed Ministries had burned down.

ADMINISTRATIVE AND LEGAL REPORTS:

1. Ms. Sherman requested a special meeting of the Palm Bay Municipal Foundation (Foundation) prior to the regular Council meeting on Thursday, December 16, 2021, at 6:00 p.m., to consider an Interlocal Agreement with the American Legion for fundraising related to the Mayor's Ball. Council concurred.

Ms. Sherman explained the intent of the agreement. She said that Sacrifice Park, located between the City Hall Complex and DeGroodt Library, was built many years ago by volunteers and police officers as a memorial to honor law enforcement officers that had lost their lives in the line of duty. Mayor Medina's charity selection was to renovate Sacrifice Park and the American Legion had taken the lead to raise funds for the improvements and the funds would go to the Foundation.

PUBLIC COMMENTS/RESPONSES:

Individuals made general comments.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 9:42 P.M.

Rob Medina, MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK



LEGISLATIVE MEMORANDUM

DATE: 1/6/2022

RE: Adoption of Minutes: Special Council Meeting 2021-32; December 9, 2021.

ATTACHMENTS:

Description

Minutes - SCM 2021-32

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING 2021-32

Held on Thursday, the 9th day of December 2021, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 6:02 P.M.

ROLL CALL:

MAYOR:	Robert Medina	Present
DEPUTY MAYOR:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER:	Donny Felix	Present
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
CITY CLERK:	Terese Jones	Present

CITY STAFF: Present was Joan Junkala-Brown, Deputy City Manager; Nelson Moya, Chief of Police; Britta Kellner, Special Projects Manager; Juliet Misconi, Chief Procurement Officer.

BUSINESS:

1. Further discussion related to the allocation of American Rescue Plan Act funding.

Mrs. Junkala-Brown advised that \$18,009,865 was allocated to the city. Disbursement would be given in two (2) equal tranches (\$9,004,932.50), and the first disbursement was received on June 17, 2021. Funding had to be expended or earmarked by December 31, 2024, and funding had to be fully expended by December 31, 2026.

Eligible uses for the Coronavirus State and Local Fiscal Recovery Funds were:

- Respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- Respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

- The provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- Make necessary investments in water, sewer, or broadband infrastructure

To date, Council had approved the use of \$649,810.86 in ARPA funding for the purchase of 151 body camera units and all associated hardware and licensing for the first two years of a five-year contract; \$2,000,000 for Building E; \$2,000,000 for the city-wide financial system replacement; up to eighty (80) hours of paid leave for employees impacted by COVID-19, as well as an additional forty (40) hours for certain safety personnel.

Mrs. Junkala-Brown said that staff was seeking Council's consideration of ARPA funding for the following items which were eligible under Revenue Loss, and which also supported a request previously approved by City Council:

- Purchase of 120 smart phones and cases (\$80,798.12) to support the previously approved acquisition of 151 body camera units;
- Disaster Recovery Site Cloud Software (\$275,000). There was an estimated annual renewal of \$200,000, which was not an eligible use of ARPA funding and would need to be budgeted annually in the General Fund; and
- Cybersecurity Enhancements (\$300,000) for the remaining three years of the City's five-year Cisco Enterprise Agreement.

Numerous individuals commented on the need to address homelessness in the city and provided other suggestions for use of ARPA funds.

Phil Moore, resident, asked that Council consider placing monies towards the homeless and homeless shelters and look toward affordable housing in the future. He suggested purchasing a building to serve as a shelter and leasing it to non-profit organization that could provide the services.

Bishop Merton Clark, Truth Revealed Ministries, commented on the fire that occurred at their cold night shelter. He said there was a serious need for a homeless shelter, especially a cold night shelter, in Palm Bay as no other cold night shelters existed in the city.

Jeff Njus, Daily Bread, Inc., supported any efforts to assist the homeless. He reminded Council that the City of Melbourne had set aside \$2.5 million to the Daily Bread towards

addressing homelessness. Mayor Medina asked if Melbourne had gone through a Request for Proposal (RFP) process. Mr. Njus said he understood that there would be an RFP process that could possibly be piggybacked by other cities, but he hoped that funds would not be distributed piecemeal. He added that Melbourne specifically stated that funding would be geared towards Daily Bread. Mayor Medina asked Mr. Njus' vision for Daily Bread. Mr. Njus said he wanted to have an outreach center at a better site than where the organization was currently located. A site had not been determined, but he was working with realtors, and was very open to being in Palm Bay due to the ability to expand and because of the number of homeless individuals. Mr. Njus said his focus was not to have a large homeless shelter but targeted flexible housing that would provide emergency and bridge housing. The center would be available twenty-four (24) hours a day. The second aspect of his vision was building more housing. Mr. Njus added that this facility would not be another Circles of Care, but partnerships would have to be made to address mental health and substance abuse disorders.

Bill Battin, resident, said that all ARPA funds should be used for tangible purposes, so you know exactly where the monies were being spent. He suggested utilizing surplus city property and those sale proceeds would then be used for the Road Maintenance Fund. Another option for ARPA funds would be to lower the City's debt.

Kera Beard, resident, felt this was an opportunity to work with mobile shelters, especially as the homeless population constantly moved around. She said that the lack of affordable housing was a huge issue.

Mayor Medina asked if staff had looked at any city properties that may be used for a facility. Mrs. Junkala-Brown said some of the challenges were that any sizeable properties were in the middle of single-family homes, many sites were much smaller, and some were previously reserved for drainage but were not ideal. After speaking with organizations that provided services, they preferred sites that were located near bus routes, daycare facilities, etc. and she was not aware of any properties that would fit those criteria.

Mayor Medina felt a motion should be entertained for the requests made by staff that were eligible uses for ARPA funding.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to allocate ARPA for the following requests:

- Purchase of 120 smart phones and cases (\$80,798.12) to support the previously approved acquisition of 151 body camera units;

- Disaster Recovery Site Cloud Software (\$275,000). There was an estimated annual renewal of \$200,000, which was not an eligible use of ARPA funding and would need to be budgeted annually in the General Fund; and
- Cybersecurity Enhancements (\$300,000) for the remaining three years of the City's five-year Cisco Enterprise Agreement.

Ms. Sherman clarified that the \$200,000 renewal for the Disaster Recovery Site Cloud Software would be for two (2) years for a total of \$675,000 (\$275,000 for the software; \$400,000 for the two-year annual renewal) and the renewal did qualify as eligible use.

Mr. Felix withdrew his second to the motion.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to amend the motion to include the \$200,000 annual renewal for two (2) years totaling \$400,000. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

Mayor Medina asked about the RFP process regarding the homeless aspect. Deputy Mayor Johnson said he was a big supporter of affordable housing and he had spoken with staff a few years ago about voluntary inclusionary housing as it did not require any funding due to House Bill 7103 from 2019. He asked if this bill was similar to House Bill 1339. Mrs. Junkala-Brown said the bills were similar except one was mandatory and the other was voluntary. Deputy Mayor Johnson said that as this option required no funding, then more funding could be allocated elsewhere.

Mr. Felix felt that was a great idea, but he wanted to address the immediate issue of homelessness and emergency transitional housing. He said that Council needed to figure out and make a commitment of how much should be set aside for this current crisis. Deputy Mayor Johnson said he just wanted to get things going now so that when the city was ready for affordable housing, everything would already be in place. Ms. Smith advised that there were provisions and state statutes related to affordable housing and staff would have to create an inclusionary housing ordinance that may provide incentives for a developer to set aside part of their project for affordable housing, such as impact fees, density, etc.

Mayor Medina asked Council's vision for moving forward.

Mr. Felix asked the specifics of the contract for the senior center. Ms. Sherman said the building was being leased to the Greater South Brevard Citizen Center, Inc., a not-for-

profit organization which paid \$10.00 per year for a five-year term. Mr. Felix said his vision was to see something similar. He said the city should provide the infrastructure and form a partnership with a not-for-profit organization, then potentially have for-profit entities contribute to the cause, and charities could provide the services.

Mayor Medina felt the city should partner with an organization that already had their own contributors and resources through an RFP process. He was unsure of the idea of buying or building a facility and as costs could be significantly higher than the \$2 million being discussed tonight. Mr. Felix said an example would be the vacant hotel on Palm Bay Road, east of Babcock Street. It could be used as transitional housing and ran by a non-profit organization. He asked if that property was for sale. Mrs. Junkala-Brown had spoken with the owner of that property in the past and did not believe it was for sale.

Mr. Foster said his concern was that if this Council made a decision today, then a future Council could take a different route and undo everything that was put into place. He preferred the RFP process with \$3 million set aside for the homeless or a homeless shelter and \$48,000 could be used immediately for emergency shelter purposes during the upcoming winter, such as vouchers. He did not want to just hand out money but wanted agreements in place to show where the monies were going. Mayor Medina and Deputy Mayor Johnson felt that a \$1 million allocation was more appropriate.

Ms. Sherman said there were many options as stated by Council and staff would structure an RFP scope for Council's review before moving forward. Mrs. Junkala-Brown said that without a scope for the RFP, she suggested utilizing the Request for Applications (RFA) process in which applicants would provide their proposals as to how they would use the funds and would be eligible uses.

Mayor Medina suggested a hybrid program that would include a mental health component as part of the continuum of care. Mr. Foster expressed concern with including mental health as it involved HIPAA laws and he felt that was a service that should be handled by health professionals. He did not want the \$3 million to go to one organization, but possibly two (2) or three (3) organizations that could tackle the homelessness issue. This was Council's opportunity to invest in people. Mr. Felix said that \$1.5 million could be allocated towards a shelter; \$500,000 for mental health services; and \$1 million for affordable housing and working with developers for same. Deputy Mayor Johnson said he did not want to lock in any dollar amounts until the RFP process was completed as the numbers could be less. There was further discussion on options of how to proceed with an RFP or RFA.

Mrs. Misconi explained that funds to non-profits were specifically exempted from the procurement process, but there was an option for Council to allocate funds to non-profits without going through a formal procurement process. She suggested a Request for Information (RFI) which could be informal. It could be a one-page form sent out to the non-profit organizations requesting what projects they could do and how much it would cost. It could be done in a short timeframe and the data would assist Council in determining how much should be allocated for the project.

Ms. Sherman said that if Council was agreeable to a dollar amount, staff would present an overview of the process at a future Council meeting. However, a dollar amount was needed for staff to move forward. Council concurred to proceed with an RFI.

Susan Connelly, resident, suggested that Council set aside a specific dollar amount, not spend anything immediately, tap into the resources through the Florida Chamber and utilize what they already have in place.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 8:38 P.M.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Juliet Misconi, Chief Procurement Officer

DATE: 1/6/2022

RE: Award of Bid: Auction services – IFB 05-0-2022 – Procurement Department (George Gideon Auctioneers, Inc.).

In accordance with the Procurement Ordinance 38.18 (C) "The sale of surplus items may be made via a competitive solicitation (Invitation for Bids) or by auction, as determined appropriate by the Chief Procurement Officer." Procurement contracts with auction companies to assist in selling capital and non-capital items and recouping revenue from any remaining market value for these items. This contract includes collecting, transporting, storing and selling the City of Palm Bay's surplus property, including office furniture, computers, IT peripherals, office equipment, machines, supplies, vehicles, selected heavy equipment, small to medium road maintenance motorized equipment, and miscellaneous items. This is a non-exclusive contract, as the City also engages additional online auction platforms via Cooperative Contract, like GovDeals, to sell surplus items.

Four (4) bids were received. The Procurement Department staff reviewed the bids for responsiveness, responsibility and ability to perform the scope of services. For this solicitation, the City requested rates for services with commission only as the base bid (as has been done historically), and requested two alternates to ensure this methodology was in the City's best interests – a commission rate with a transportation fee, and a buyer's premium in lieu of a commission. The Department reviewed the bids and found the base bid from George Gideon Auctioneers from Zellwood, Florida, to be in the City's best interest. The base bid is commission rate deducted from sales, with no transportation fee, no minimum amount of surplus for hauling, and no restrictions on what can be sold. The City does not have a central warehouse to store surplus and cannot guarantee full truck loads for every haul, so the alternate bid for hauling is not in the City's best interests. The City also has a Buyer's Premium option already under contract with GovDeals, one of the largest online auction companies with a nationwide reach, so the second alternate is also not in the City's best interests, since Buyer's Premiums sometimes reduce bidding. In addition, the commission rates for all five years of the contract are lower than the commission rates we have paid in the previous five years. George Gideon Auctioneers is the incumbent vendor with a good service history and serves over seventy government agencies, including Brevard County.

Staff recommends George Gideon Auctioneers, Inc. 2753 N Hwy 441, Zellwood, FL 32798 for award of IFB # 05-0-2022/SM, Auction Services.

REQUESTING DEPARTMENT:

Procurement

FISCAL IMPACT:

Revenue proceeds are a percentage of sales and vary based on surplus volume. In Fiscal Year 2021, revenue proceeds less commission hit a 17-year record of \$290,043.56. This year we are on pace to break that record, with revenue proceeds less commission in the first quarter totaling \$118,287.86. The highest valued items – vehicles and heavy equipment – have the lowest commission rate. The proceeds are deposited back in the funds in which they were purchased from and are current depreciating, including 001-0000-365-1001, 101-0000-365-1001, 461-0000-365-1001, 112-0000-365-1001, 421-0000-365-1001, 451-0000-365-1001, 512-0000-365-1001, and 521-0000-365-1001.

RECOMMENDATION:

Motion to approve award of IFB #05-0-2022/SM, Auction Services to George Gideon Auctioneers, Inc. 2753 N Hwy 441, Zellwood, FL 32798. Council approval is requested to establish a three (3) year term contract, renewable by the Procurement Department for two (2) additional one (1) year terms.

ATTACHMENTS:

Description

Tabulation

IFB No. 05-0-2022/SM Auction Services To include all cost related to this bid process but not limited to: Auction sales commission, transportation, advertising and storage. NO BUYER'S PREMIUM OR HAULING FEE			George Gideon Auctioneers, Inc.		IAS Family, Inc. dba Insight Auctioneers and Sales		Central Florida Auction, LLC		Royal Auction Group, Inc.	
			2753 N Hwy 441		5000 SR 66		4445 US HWY 17 92 W		2738 Gall Blvd.	
			Zellwood, FL 32798		Sebring, FL 33875		Haines City, FL 33844		Zephyrhills, FL 33531	
			407-886-2211/407-886-2248		863-386-1225		863-422-7102		813-992-7368	
Base Bid			admin@ggauctions.com		sgarner@insightauction.com		cfauctions@yahoo.com		gfrazier@royalauctiongroup.com	
Item	Item Description	Estimated Gross Proceeds, Annually (A)	Commission Percentage, First 3 years (B)	Proceeds to the City (C) A-(A*B)=C	Commission Percentage, First 3 years (B)	Proceeds to the City (C) A-(A*B)=C	Commission Percentage, First 3 years (B)	Proceeds to the City (C) A-(A*B)=C	Commission Percentage, First 3 years (B)	Proceeds to the City (C) A-(A*B)=C
1	All Titled Items (including heavy equipment)	\$250,000.00	12.5%	\$218,750.00	No Bid		No Bid		No Bid	
2	All Non-Titled, Motorized Items such as Tractors, Mowers, Generators, Welders and Similar Items	\$10,000.00	15%	\$8,500.00	No Bid		No Bid		No Bid	
3	All Office Furniture and Equipment, Small Tools, Electronics and Miscellaneous Equipment	\$60,000.00	40%	\$36,000.00	No Bid		No Bid		No Bid	
BASE BID: TOTAL ESTIMATED PROCEEDS TO THE CITY					No Bid		No Bid		No Bid	
4	Year 4 Commission: All Titled Items (including heavy equipment)		13.00%		No Bid		No Bid		No Bid	
5	Year 4 Commission: All non-titled, motorized items such as tractors, mowers, generators, welders and similar items		16.00%		No Bid		No Bid		No Bid	
6	Year 4 Commission: All office furniture and equipment, small tools, electronic and miscellaneous equipment and items		40.00%		No Bid		No Bid		No Bid	
7	Year 5 Commission: All Titled Items (including heavy equipment)		13.00%		No Bid		No Bid		No Bid	
8	Year 5 Commission: All non-titled, motorized items such as tractors, mowers, generators, welders and similar items		16.00%		No Bid		No Bid		No Bid	
9	Year 5 Commission: All office furniture and equipment, small tools, electronic and miscellaneous equipment and items		60.00%		No Bid		No Bid		No Bid	

IFB No. 05-0-2022/SM Auction Services			George Gideon Auctioneers, Inc.		Central Florida Auction, LLC		IAS Family, Inc. dba Insight Auctioneers and Sales		Royal Auction Group, Inc.	
To include all cost related to this bid process but not limited to: Auction sales commission, transportation, advertising and storage. NO BUYER'S PREMIUM.			2753 N Hwy 441		4445 US HWY 17 92 W		5000 SR 66		2738 Gall Blvd.	
			Zellwood, FL 32798		Haines City, FL 33844		Sebring, FL 33875		Zephyrhills, FL 33531	
			407-886-2211/407-886-2248		863-422-7102		863-386-1225		813-992-7368	
			Alternate #1		admin@ggauctions.com		cfauctions@yahoo.com		sgarner@insightauction.com	
Item #	Category	Estimated Gross Proceeds, Annually (A)	Commission Percentage, First 3 years (B)	Proceeds to the City (C)	Commission Percentage, First 3 years (B)	Proceeds to the City (C)	Commission Percentage, First 3 years (B)	Proceeds to the City (C)	Commission Percentage, First 3 years (B)	Proceeds to the City (C)
				A-(A*B)=C		A-(A*B)=C		A-(A*B)=C		A-(A*B)=C
1	All Titled Items (including heavy equipment)	\$250,000.00	10.00%	\$ 225,000.00	10.00%	\$ 225,000.00	No Bid		No Bid	
2	All non-titled, motorized items such as tractors, mowers, generators, welders and similar items	\$10,000.00	12.00%	\$ 8,800.00	10.00%	\$ 9,000.00	No Bid		No Bid	
3	All office furniture and equipment, small tools, electronic and miscellaneous equipment and items	\$60,000.00	15.00%	\$ 51,000.00	20.00%	\$ 48,000.00	No Bid		No Bid	
4	Hauling Fee per pick up: Specify the price and the unit of measure (flat rate, hourly rate, etc.). Assume that each pick up takes approximately 3 hours onsite, has stops at 2 City facilities, and includes travel time between the facilities, but does not include travel time to the first stop or back to the auctioneer's location. On average, the City has 10 pick ups per year.	<u>Vehicle</u> /Trucks/Equipment - 53' Landoll Trailer \$450/load. <u>Vehicles/Trucks/Equipment</u> - Special/Oversize/Permit Loads - \$125/hr. <u>Miscellaneous</u> (small items) - Box Truck - \$665/load.			No Bid		No Bid		No Bid	
5	Year 4 Commission: All Titled Items (including heavy equipment)		11%		No Bid		No Bid		No Bid	
6	Year 4 Commission: All non-titled, motorized items such as tractors, mowers, generators, welders and similar items		15%		No Bid		No Bid		No Bid	
7	Year 4 Commission: All office furniture and equipment, small tools, electronic and miscellaneous equipment and items		20%		No Bid		No Bid		No Bid	
8	Year 5 Commission: All Titled Items (including heavy equipment)		11%		No Bid		No Bid		No Bid	
9	Year 5 Commission: All non-titled, motorized items such as tractors, mowers, generators, welders and similar items		15%		No Bid		No Bid		No Bid	
10	Year 5 Commission: All office furniture and equipment, small tools, electronic and miscellaneous equipment and items		20%		No Bid		No Bid		No Bid	

Note: Also charge 2% online fee, and 3.74% credit card fees

IFB No. 05-0-2022/SM Auction Services To include all cost related to this bid process but not limited to: Buyer's Premium, transportation, advertising and storage. <u>No</u> City Commission or Hauling Rate.			Central Florida Auction, LLC		IAS Family, Inc. dba Insight Auctioneers and Sales		Royal Auction Group, Inc.		George Gideon Auctioneers, Inc.	
			4445 US HWY 17 92 W		5000 SR 66		2738 Gall Blvd.		2753 N Hwy 441	
			Haines City, FL 33844		Sebring, FL 33875		Zephyrhills, FL 33531		Zellwood, FL 32798	
			863-422-7102		863-386-1225		813-992-7368		407-886-2211/407-886-2248	
Alternate #2			cfauctions@yahoo.com		sgarner@insightauction.com		gfrazier@royalauctiongroup.com		admin@ggauctions.com	
Item #	Category	Estimated Gross Proceeds, Annually (Note: Bidder to estimate change in value from Table 1, Column B, which is based on proceed history from a purely Commission based structure (A))	Buyer's Premium, Year 1-3 and renewal periods, Year 2 and 5	Proceeds to the City	Buyer's Premium, Year 1-3 and renewal periods, Year 2 and 5	Proceeds to the City	Buyer's Premium, Year 1-3 and renewal periods, Year 2 and 5	Proceeds to the City	Buyer's Premium, Year 1-3 and renewal periods, Year 2 and 5	Proceeds to the City
			(B)	A-(A*B)=C	(B)	A-(A*B)=C	(B)	A-(A*B)=C	(B)	A-(A*B)=C
1	All Titled Items (including heavy equipment)	\$250,000.00	10.00%	\$250,000.00	10.00%	\$250,000.00	10.00%	\$250,000.00	13.00%	\$250,000.00
2	All non-titled, motorized items such as tractors, mowers, generators, welders and similar items	\$10,000.00	10.00%	\$10,000.00	10.00%	\$10,000.00	10.00%	\$10,000.00	15.00%	\$10,000.00
3	All office furniture and equipment, small tools, electronic and miscellaneous equipment and items	\$60,000.00	10.00%	\$60,000.00	10.00%	\$60,000.00	10.00%	\$60,000.00	40.00%	\$60,000.00

Note: Also charge 2% online fee, and 3.74% credit card fees



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Christopher A. Little, P.E.; Juliet Misconi, Chief Procurement Officer

DATE: 1/6/2022

RE: Miscellaneous: 'Other Agency' contract, sodium hypochlorite system upgrade, North Regional Water Treatment Plant (Town of Davie contract) – Utilities Department (Odyssey Manufacturing – \$168,055).

The Utilities Department currently piggybacks Town of Davie contract #B-16-138, with Odyssey Manufacturing for Chemical System Maintenance and Repairs. This contract started December 7, 2016, for a five-year term ending on December 6, 2021, with two one-year renewals available. This contract has been renewed to December 6, 2022. The City executed an agreement with Odyssey to piggyback this contract on March 25, 2021, for an amount not to exceed \$90,000. This agreement expires December 6, 2023. The Utilities Department has received a quote from Odyssey Manufacturing, utilizing the piggyback, to upgrade the sodium hypochlorite system at the North Regional Water Treatment Plant (NRWTP), in the amount of \$168,055.

The existing sodium hypochlorite system was installed in October 2008 and has reached the end of its useful life (typical life is ten years). This system is beginning to fail and requires continual repairs. The upgrade of the system will include replacement of two pump skids, replacement of the injection piping and modifications to the existing building. The upgrade of the sodium hypochlorite system at the NRWTP is a budgeted project.

Staff has reviewed the quote and requests council approval to proceed with the upgrade of the sodium hypochlorite system at the NRWTP, in the amount of \$168,055.

REQUESTING DEPARTMENT:

Utilities, Procurement

FISCAL IMPACT:

Total cost will be \$168,055. Funding is available in the Utilities Department's Renewal & Replacement Fund 424-8022-533-6221, project 19WS08.

RECOMMENDATION:

Motion to approve the piggyback of Town of Davie, contract #B-16-138 with Odyssey Manufacturing for the NRWTP sodium hypochlorite system upgrade, in the amount of \$168,055.

ATTACHMENTS:

Description

Odyssey Manufacturing Quote



ODYSSEY
MANUFACTURING CO.

FACSIMILE TRANSMITTAL

From: Patrick H. Allman
To: Bic Ramjit, City of Palm Bay, Troutman WTP Superintendent
Fax #: E-Mailed
Re: CITY OF PALM BAY TROUTMAN WTP SODIUM HYPOCHLORITE UPGRADE
Date: November 22, 2021
Pages: 3, including this cover sheet.

Bic,

As a follow-up to your request and my site visit, Odyssey proposes to do the following chemical system maintenance work in accordance with the chemical system maintenance agreement between the City of Palm Bay and Odyssey Manufacturing Co. based on a piggyback of a similar agreement with the Town of Davie. As you know, Odyssey is a licensed plumbing and general contractor who specializes in chemical system design, permitting, equipment supply, installation, and service work. We have installed over 3,500 chemical systems in Florida including over ten for the City of Palm Bay.

Background

The original sodium hypochlorite system at the Troutman Water Treatment Plant (WTP) was installed in October 2008. Typically, the piping and components on these systems last about ten years so the piping for this system is way past end of life. The tanks have been replaced but the feed equipment is original and well past end of life. The sodium hypochlorite system tanks and feed equipment sit on a concrete pad that was covered by a metal building a few years ago. The building has side panels on most of the east side to keep the sun off the tanks.

Proposed Solution

Per your request, Odyssey proposes to perform the following modifications to the existing building:

- 1) Install a full wall on the east side where the Day Tank used to be.
- 2) Install a full wall on the north side where the Day Tank used to be.
- 3) Install a full wall on the north side of the building with a double door to allow access
- 4) Install a partial full wall (approximately 20' wide)

From the desk of...

Patrick H. Allman
General Manager

1484 Massaro Boulevard
Tampa, Florida 33619

Cellular/Voicemail: (813) 335-3444
Business: (800) ODYSSEY
Facsimile: (813) 630-2589

We will provide the same composolite panels that you currently have installed to make the full walls. The panels are 24" high and come in 20' widths. They are attached by drilling a hole in them and attaching them to an "L-bracket" that is welded to the existing 8" x 8" support poles for the building. In order to do this work, we have to weld 3" x 3" L-brackets every 12" on the existing (and new) support poles. Additionally, the span on the north wall is 23' so we will be welding a new vertical 8" x 8" support pole along this span and attaching it at the bottom to the concrete to match the other vertical support poles. We will be providing equipment and helpers but we are subcontracting out the aluminum welding and supply to Benco Fabrication who has performed this type of work for us on numerous other projects.

As part of the work, Odyssey will be demolishing the existing chemical feed building and chemical feed equipment. During the transition period, we will setup a temporary pump skid. We will also have to relocate the ultrasonic level sensor panel from the side of the building to be demolished to the east wall as we discussed. There is a fair amount of electrical piping to demolish.

Odyssey proposes to replace the two pump skids at the Troutman WTP with new Blue Planet Environmental pump skids constructed of welded PVC sheets. Blue Planet is the leading supplier of feed equipment to the water and wastewater industry and their fabrication facility is in Palm Bay. The pump skids would each contain three Ragazzini (formerly W&T PPS) S-10 peristaltic pumps with Leason VFD's rated for up to 24 gph@111 psi and 60 rpm. The skids would sit up on PVC stands and thus the pumps would be up about 3' off the ground (at waist level). Each pump would contain inlet and outlet isolation valves, an inlet strainer, inlet, and outlet flushing connections, a backpressure valve, a pressure relief valve, and a pressure gage on an isolation valve. The skid would have a common calibration column piped back to the closest storage tank. The skid would also have an HOA panel which would serve as the termination point for all the electrical and control wiring. All the work would be done in such a manner to maintain continuous disinfection. There is a two-year parts and labor warranty on the work (with the exception of the peristaltic tubes). As part of the new feed equipment, we will have to run a new 40-Amp circuit from the MCC area in the RO Building.

As we discussed, the pump skid you would be getting would be identical to the one you saw for the Brevard County Central WRF. As an alternative, we could furnish Blue White A3V24-MNK peristaltic pumps with built-in VFD's rated for 33 gph@125 psi in lieu of Ragazzini pumps. The savings would be \$1,600 per pump for a total savings or deduct from the proposed pricing of \$9,600. As we discussed, the Ragazzini pump is a more robust pump and should be less maintenance and last 12 years vs. the projected 7-year life of the Blue White pumps.

Also, as part of the work, Odyssey proposes to replace the injection piping to the following points:

- VOC
- RO Clearwell
- Main Clearwell
- Filters
- Filters 3/4

From the desk of...

Patrick H. Allman
General Manager

1484 Massaro Boulevard
Tampa, Florida 33619

Cellular/Voicemail: (813) 335-3444
Business: (800) ODYSSEY
Facsimile: (813) 630-2589

The new piping would be ½" Teflon tubing inside a 2" Schedule 80 PVC containment pipe. There would be a transition box from tubing to hard piping at each end. All above ground piping outside the feed pump area would be painted yellow per FDEP directives.

Project Cost

• Engineering/O&M Manuals		(\$ 2,200)
- 20 hrs – Engineer@\$90/hr	\$ 1,800	
- 10 hrs – Engineering Helper@\$40/hr	\$ 400	
• Metal Building Modifications		(\$ 47,450)
- Composolite Panels	\$ 32,000	
- Misc. Materials (SS316 Lag Bolts)	\$ 1,900	
- FRP Double Door	\$ 2,900	
- Benco Subcontract	\$ 4,920	
- High Lift Manlift	\$ 2,850	
- 24 hrs – Technician Labor@\$80/hr	\$ 1,920	
- 24 hrs – Helper@\$40/hr	\$ 960	
• Demolition		(\$ 5,125)
- Dumpster	\$ 960	
- 20 hrs – Technician Labor@\$80/hr	\$ 960	
- 16 hrs – Helper@\$40/hr	\$ 640	
- Loaner Pump Skid Rental	\$ 1,500	
- Miscellaneous Piping	\$ 475	
- Miscellaneous Wiring/Conduit	\$ 550	
• New Feed Equipment		(\$102,740)
- 20 hrs – Technician Labor@\$80/hr	\$ 1,600	
- 16 hrs – Helper@\$40/hr	\$ 640	
- 6 Ragazinni pumps@\$5,950 each	\$ 35,700	
- 2 Triple Pump Skids w/HOA panels@\$31,500	\$ 63,000	
- Lot- Miscellaneous Piping Materials	\$ 400	
- Miscellaneous Electrical Parts	\$ 1,400	
• Injection Piping Replacement		(\$ 9,740)
- Piping/Pipe Supports/Valves/Boxes/Tubing	\$ 5,900	
- 24 hrs – Technician Labor@\$80/hr	\$ 1,920	
- 48 hrs – Helper@\$40/hr	\$ 1,920	
• Startup and Training Services		(\$ 800)
- 10 hrs – Technician Labor@\$80	\$ 800	
<hr/>		
Total		\$ 168,055

Thank you for your consideration. Please do not hesitate to contact me at (800) ODYSSEY or cellular (813) 335-3444 if I can provide any more information.

From the desk of...

Patrick H. Allman
General Manager

1484 Massaro Boulevard
Tampa, Florida 33619

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Facsimile: (813) 630-2589



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Juliet Misconi, Chief Procurement Officer

DATE: 1/6/2022

RE: Miscellaneous: 'Cooperative Purchase', miscellaneous products and services, online marketplace (Omnia Partners contract) – various City Department (Amazon Business – 'as needed' purchases); approval of Amazon Business Prime Medium subscription (\$1,299).

Omnia Partners, formed from the merger of several purchasing groups, including National IPA and U.S. Communities Government Purchasing Alliance, is the largest purchasing organization for cooperative purchasing agreements. In 2017, Omnia announced a new contract with Amazon Business for an Online Marketplace for the Purchase of Products and Services. This contract was the result of a formal, competitive Request for Proposals, expressly issued with the intent of being a national cooperative contract to leverage the buying power of public agencies nationwide. They received seven (7) proposal responses and awarded to Amazon Business, with an initial term of five years with three two-year renewal options. The City started using this contract upon contract award. In recent years, the Citywide spend has exceeded \$100,000 and now requires Council approval. If approved, this contract will be added to the Procurement Department's annual request to use other agency contracts.

This contract supplies many cost-savings benefits and efficiencies for City operations and is utilized by all departments. The contract is tailored for the public sector and requires tax-exempt account access from the Amazon Business portal (not the Amazon portal used by commercial consumers). The Procurement Department administers employee access and can run reports and queries on spend with details of each transaction and item. Amazon Business provides dedicated customer support, detailed documentation of ordering history, easy returns, and hundreds of millions of products from hundreds of thousands of suppliers with discount pricing.

Departments like Police, Parks & Facilities, Information Technology and Fire use this contract for IT equipment, police equipment, janitorial supplies, mower parts, specialty tools, electrical supplies, fire tools, fire equipment, apparatus tools, and SWAT supplies. It is especially beneficial for hard-to-find materials, like parts for aging equipment. Departments often shop the Amazon Business contract against other cooperative contracts like Office Depot, Staples, B&H, CDWG, HP, Anixter, and Southern Computer Warehouse, as well as local bulk suppliers like BJ's Wholesale Club. Amazon Business was especially critical in supplying commodities during the pandemic, supplying PPE like masks, soap, and sneeze guards. In fact, nearly 19% of the spend from contract year January 2020 to January 2021 was COVID-related expenditures, reimbursed through CARES Act dollars. Amazon Business also provides contract redundancy for delivery of critical supplies during the global

supply shortage.

In accordance with the City's Code of Ordinance, Section 38.13(D)(4) Cooperative Purchases: The City may purchase from any cooperative contract, including but not limited to: term contracts by the State of Florida, Federal General Services Administration, and other governmental cooperatives and entities within and outside the State of Florida provided that the cooperative contract is established in compliance with the procurement procedures and requirements of the issuing body, entity, authority, or cooperative. If such other governmental or cooperative contract is utilized, the public notice requirements and the need to utilize the methods of selection processes are obviated. Any such contracts equal to or in excess of one hundred thousand dollars (\$100,000) shall go to the City Council for approval.

Staff is requesting to utilize the Omnia Contract # R-TC-17006, valid from January 19, 2017 through January 18, 2022 with three (3) additional two-year renewal periods through January 18, 2028 for the purchase of products and supplies from Amazon Business, located in Seattle, Washington. In addition, Staff is requesting to subscribe to Amazon Business Prime Medium Plan, which is \$1299 per year. It will cover all buyers on all accounts and includes progressive discounts on products the City buys the most, increased analytics, unlimited, free, two-day shipping and free same-day shipping on eligible orders.

REQUESTING DEPARTMENT:

Procurement

FISCAL IMPACT:

Purchases are made from various accounts Citywide. Most recent historical spend for contract year January 19, 2020 through January 28, 2021 was approximately \$157,000 and is trending upward an average of 23% per year. Because these purchases are "as-needed," actual purchases may be less or more based on available budget and need. Purchases will only be made if Council has approved the funds and they are appropriated in the applicable account. Amazon Business Prime Medium is \$1299 per year and Procurement will split the cost among departments based on the most recent 12-month spend.

RECOMMENDATION:

Motion to approve the purchase of the products and supplies for Citywide departments from Amazon Business in Seattle, Washington, utilizing cooperative Omnia Contract R-TC-17006 through the expiration including any renewal options and approve the Amazon Business Prime Medium subscription.

ATTACHMENTS:

Description

Omnia Executive Summary



ON-LINE MARKETPLACE FOR THE PURCHASES OF PRODUCTS AND SERVICES
Executive Summary

Lead Agency: Prince William County Public Schools **Solicitation:** R-TC-17006
RFP Issued: September 14, 2016 **Pre-Proposal Date:** N/A
Response Due Date: October 14, 2016 **Proposals Received:** #12

Awarded to: Amazon Services, LLC, Contract #R-TC-17006

Prince William County Public Schools Purchasing Office issued RFP #R-TC-17006 on September 14, 2016, to establish a national cooperative contract for an On-line Marketplace for the Purchases of Products and Services.

The solicitation included cooperative purchasing in Section 1. Purpose:

The Purpose and Intent of this Request for Proposal (RFP) is to establish a cooperative contract, or contracts, for an On-line Marketplace for the purchase of the product categories in Section 4.1 for Prince William County Public Schools, Virginia, (herein referred to as "PWCS" or "Lead Public Agency") on behalf of all states, local governments, school districts, and higher education institutions in the United States of America, and other governmental agencies and nonprofit organizations (herein "Participating Public Agencies) through sealed proposals from qualified sources to establish term contract, to include delivery, through competitive negotiations in accordance with the statement of needs, terms and conditions stated herein.

Notice of the solicitation was sent to potential offerors, as well as advertised in the following:

- Daily Journal of Commerce, OR
- Fauquier Times, VA
- The Honolulu Star, HI
- The Buy Line Blog-City Purchasing, Seattle.gov
- The New York State Contract Reporter, NYSCR.ny.gov
- ONVIA
- Merx.com
- U.S. Communities
- Prince William County Public Schools, VA
- Virginia's e-Procurement Portal, eVA, dgs.virginia.gov
- Washington's Electronic Business Solutions

On October 14, 2016 proposals were received from the following offerors:

- American Product Distributors
- Complete Book & Media Supply
- Innoseal
- Hi-Touch
- Music and Arts
- LD Products

- World ERP
- Amazon Services, LLC/Amazon Business
- Essendent Co.
- Peripole, Inc. d.b.a. Peripole-Bergerault, Inc.
- Scull Studios, LLC
- Textbook Warehouse, LLC

Seven (7) proposals were deemed non-responsive, five (5) proposals were deemed responsive and evaluated by an evaluation committee. The five (5) responsive proposals are Amazon Services LLC/Amazon Business, Essendent, Peripole, Scull Studios and Textbook Warehouse. Using the evaluation criteria established in the RFP, the committee elected to award to Amazon Services, LLC /Amazon Business for an online marketplace.

Contract includes:

Amazon Business has everything you love about Amazon, tailored for the public sector, including state and local government agencies, public and private K-12 school districts and higher education organizations, and nonprofit businesses. Solution benefits include:

- Offers comparison shopping
- Tax Exemption Program
- Enable spending controls
- Approval workflows
- Level 3 transaction reporting
- Reporting and analytics

Term:

Initial five-year agreement from January 19, 2017 through January 18, 2022 with the option to renew for three (3) additional two (2) year periods through January 18, 2028.

Pricing/Discount:

The Prince William County Public Schools, VA awarded online marketplace makes it easy to compare prices and find the best deals. To begin, Amazon Business customers must be registered as participants of OMNIA Partners in order to use the contract. Please [Register to Participate](#). There are no costs, minimum quantity requirements or spend limits with OMNIA Partners or to create an Amazon Business account.

To get started, follow these steps:

Register for a FREE Amazon Business account by clicking [here](#).

Already have an Amazon Business account and registered with OMNIA Partners? Please enroll to use the contract by completing the contract enrollment form below.

Complete the contract enrollment form by clicking [here](#). Once you complete the form, an Amazon Business Customer Advisor will contact you within three business days to complete the registration process.

OMNIA Partners, Public Sector Landing Pages: <https://www.omniapartners.com/publicsector/contracts/supplier-contracts/amazon-business>



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nancy A. Bunt, Community & Economic Development Director

DATE: 1/6/2022

RE: Resolution 2022-03, conveying City-owned surplus real estate located at 171 Holiday Park Boulevard NE to buyer Tommy E. Ratcliffe (\$20,990).

In 2019, the City acquired a 0.12-acre lot located at 171 Holiday Park Boulevard NE in Port Malabar Holiday Park Mobile Home Recreation District (Holiday Park) through escheatment by Brevard County for nonpayment of taxes pursuant to the tax certificates/tax deeds sale procedures of the Chapter 197, Florida Statutes.

On August 20, 2020, City Council declared this property as surplus real estate. This property has been listed for sale through the City's contract residential real estate broker, Ellingson Properties, LLC. since April 2021 with no offers.

It is important to note that, several issues associated with this property. While the City has title to the land, it does not have clear title to the mobile home. Any interested buyer, at their own expense, would need to subsequently file a title action related to the mobile home, which is in severe disrepair as the home has been neglected for years. The Buyer accepts the property as-is and understands that the title action and all other remedies to the property or mobile home is at the Buyer's expense. Second, the mobile home on the property is deemed uninhabitable and will need to be removed from the property at the expense of the buyer after obtaining clear title. Third, the property lies within the Port Malabar Holiday Park Mobile Home Park Recreation District and is governed by rules, regulations and deed restrictions. As such, two significant requirements are: the unit remains owner occupied, and the person(s) must be 55 years or older.

Ellingson Properties prepared a Comparative Market Analysis (CMA) with a suggested list price of \$20,990. Following review, the City requested the broker list this property at the value of the highest comparable, which was \$26,089. Due to the time the property has been listed on the market with no offers, and the above issues associated with the property the City's broker provided a revised list price of \$20,990 on October 22, 2021. On November 2, 2021 City Council accepted a purchase offer of \$20,990 from Tommy E. Ratcliffe.

REQUESTING DEPARTMENT:
Community & Economic Development

FISCAL IMPACT:

Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

RECOMMENDATION:

Motion to adopt a Resolution conveying City-owned surplus real estate located at 171 Holiday Park Blvd. NE with buyer Mr. Tommy E. Ratcliffe.

ATTACHMENTS:

Description

**Purchase Contract with Addendum
Resolution 2022-03**

"AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



PARTIES: Palm Bay City Of ("Seller"),
and Tommy E. Ratcliffe ("Buyer"),

agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

1. PROPERTY DESCRIPTION:

- (a) Street address, city, zip: 171 Holiday Park Boulevard NE Palm Bay 32907
(b) Located in: Brevard County, Florida. Property Tax ID #: 2843441
(c) Real Property: The legal description is
PID: 28-37-33-KA-14-14; LD: PORT MALABAR HOLIDAY PARK UNIT 1 LOT 14 BLK 14; PB/PG:
0022/0125

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

- (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware ("Personal Property").
Other Personal Property items included in this purchase are: None

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- (e) The following items are excluded from the purchase: mobile/manufactured home

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency):\$ 20,990.00

- (a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)**\$ 2,100.00

The initial deposit made payable and delivered to "Escrow Agent" named below
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☒ is to be made within 3 (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Name: E Title Services, LLC
Address: 5815 S US 1 Rockledge FL 32955 Phone: 321-450-4770
Email: Lu@etitlebrevard.com Fax: _____

- (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date\$ _____

(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8.....\$ _____

- (d) Other:\$ _____

- (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD S)\$ 18,890.00

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before 12/7/2021, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

4. CLOSING; CLOSING DATE: The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

Buyer's Initials

TER

Page 1 of 12

Seller's Initials

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this Contract, the Closing shall occur on 1/14/2022 ("Closing Date"), at the time established by the Closing Agent.

5. EXTENSION OF CLOSING DATE:

- (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 days.
- (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

6. OCCUPANCY AND POSSESSION:

- (a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall have accepted the Property in its existing condition as of time of taking occupancy, see Rider T PRE-CLOSING OCCUPANCY BY BUYER.

- (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER.

- 7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☒ may not assign this Contract. IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

FINANCING

8. FINANCING:

- ☒ (a) This is a cash transaction with no financing contingency.
- ☐ (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan Approval Period"): (1) Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) mortgage loan for purchase of the Property for a **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ (if left blank, then 30) years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing ("Appraisal").

- (i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval unless Rider V is attached.

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

- (ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status

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and progress and release preliminary and finally executed closing disclosures and settlement statements, as appropriate and allowed, to Seller and Broker.

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within Loan Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8b(iii), above, and Buyer thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see Rider D for terms).

☐ (d) Purchase money note and mortgage to Seller (see Rider C for terms).

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- Charges for FIRPTA withholding and reporting
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: _____

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11, a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)

(c) **TITLE EVIDENCE AND INSURANCE:** At least 15 (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a

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search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.

(CHECK ONE):

☒ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Buyer shall designate Closing Agent. Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$_____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed \$_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☒ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be deemed selected for such assessment(s).

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"

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or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.

- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have 0 (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.

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- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.
- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

- 13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.
- In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.
- 14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor.

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Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real 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 names of all such general contractors, subcontractors, suppliers and materialmen, 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.

F. TIME: Time is of the essence in this Contract. Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.


G. FORCE MAJEURE: Buyer or Seller shall not be required to exercise or perform any right or obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the right or obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed,

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO REPORTING OBLIGATION.** If Closing Agent is required to comply with a U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial Owners, including photo identification, and related to the transaction contemplated by this Contract which are required to complete mandatory reporting, including the Currency Transaction Report; and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 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; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded 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; and (4) if Buyer fails to make timely demand for refund of the Deposit, 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.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over 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 to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on 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 prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5% or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public or official records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior 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 Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "Collection" or "Collected" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been Collected in Closing Agent's accounts.

T. RESERVED.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

(IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. BUYER WAIVER OF CLAIMS: *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

ADDENDA AND ADDITIONAL TERMS

19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- | | | |
|---|---|---|
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> X. Kick-out Clause |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> D. Mortgage Assumption | <input checked="" type="checkbox"/> P. Lead Paint Disclosure (Pre-1978) | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> CC. Miami-Dade County Special Taxing District Disclosure |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> S. Lease Purchase/ Lease Option | <input type="checkbox"/> DD. Seasonal/Vacation Rentals |
| <input type="checkbox"/> H. Homeowners/Flood Ins. | <input type="checkbox"/> T. Pre-Closing Occupancy | <input type="checkbox"/> EE. PACE Disclosure |
| <input type="checkbox"/> I. RESERVED | <input type="checkbox"/> U. Post-Closing Occupancy | <input type="checkbox"/> Other: |
| <input type="checkbox"/> J. Interest-Bearing Acct | <input type="checkbox"/> V. Sale of Buyer's Property | |
| <input type="checkbox"/> K. RESERVED | <input type="checkbox"/> W. Back-up Contract | |
| <input type="checkbox"/> L. RESERVED | | |

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20. ADDITIONAL TERMS:

1. Port Malabar Holiday Park Recreation District Disclosure
2. Port Malabar Holiday Park Purchase Addendum
3. Addendum "A" to Contract
4. E title Services ABA Disclosure Statement
5. Offer Acceptance Acknowledgement
6. Seller's Property Disclosure Update
7. Utilities Acknowledgement
8. Lead Bases-Paint Disclosure

Buyer acknowledges that there is an application for purchase/registration if Buyer is a first-time resident. Application and the non-refundable \$50 application fee for purchase/registration needs to be taken to the Holiday Park Business Office suggested to call them for info at 321-724-2240. Buyer understands that this property is not habitable and it is the Buyers responsibility to remove mobile home and concrete pad.

COUNTER-OFFER

☐ Seller counters Buyer's offer.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

620*	Buyer:	<u>Tommy E. Ratcliffe</u>	Date:	<u>11/02/2021</u>
621*	Buyer:	<u>Tommy E. Ratcliffe</u>	Date:	
622*	Seller:	<u>Dana Jackson, City Manager</u>	Date:	<u>11-19-2021</u>
623*	Seller:	<u>Palm Bay City Of</u>	Date:	

Buyer's address for purposes of notice

Seller's address for purposes of notice

BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

Dana Jackson
Cooperating Sales Associate, if any
EXP Realty LLC
Cooperating Broker, if any

Gregory Ellingson
Listing Sales Associate
Ellingson Properties
Listing Broker

Addendum 'A' to Contract

The Addendum is made to the Contract between the City of Palm Bay, a Florida municipal corporation, as Seller, and Tommy Ratcliffe 171 Holiday Park Melbourne FL as Buyer, for the sale and purchase of the Property at 32907, as follows, and the provisions, terms, and conditions stated herein shall be controlling over any provision, term, or condition to the contrary contained in the remainder of the Contract.

No Conveyance of Personal property: Seller is not hereby selling or agreeing to convey any personal property and makes no representations or warranties regarding the same. Seller will not provide a bill of sale or any other document of conveyance or assignment of any warranties, etc. for any personal property located on the premises. Seller abandons any and all such personal property located on the premises at the Effective Date unless specifically excluded by addendum and shall not be responsible for removal of the same. If any such personal property located on the premises at the Effective Date shall be damaged, destroyed, lost, or stolen during the pendency of the Contract prior to Closing, the same shall not excuse Buyer's performance in any way Buyer's obligations under this Contract including Buyer's obligation to close.

All prorations at closing final: All prorations, including but not limited to, any and all taxes, fees, utilities, homeowners or condominium association assessments and dues and any other charges against the Property as reflected on the settlement statement executed by the Seller are FINAL. No adjustments or payments will be made by Seller post-closing. Tax prorations are based on the last known tax year or current tax bill if available. Special assessments will be prorated up to the Closing Date regardless if said assessments are due in full or in future installments. Any special assessments levied and payable in installments shall be prorated to the Closing Date and shall be assumed and paid by Buyer from the Closing Date forward. In no instance shall the Seller be responsible for the payment of any assessment pending but not levied as of the Closing Date.

No Duty to Cure Title Defects: Seller's obligations under this Contract are subject to Seller's ability to deliver marketable title. Seller has no obligation to expend any money to cure any defect in title. Buyer's sole remedy is limited to a return of Buyer's Deposit. Under no circumstances shall Seller be obligated to reimburse Buyer for any of Buyer's expenses in inspecting the Property.

If in Seller's sole discretion Seller finds that it is not able to convey marketable title without expenditure of monies or other resources, Seller has the sole discretion to either extend the contract or terminate the contract and return all earnest money to Buyer upon termination.

If Seller elects to extend this Contract of Sale, Seller shall have a minimum 30 days to resolve any title defects before terminating the Contract. If in Seller's sole discretion Seller is not able to cure any title defects within the 30 day period, either Buyer or Seller has the option to immediately terminate this Contract of Sale, with no further obligation, and all earnest money will be returned to Buyer. Buyer and anyone claiming by, through, or under Buyer, including any mortgagees of Buyer, agree to hold Seller

harmless from all liabilities, losses, costs, charges, expenses and damages of any type whatsoever, including reasonable attorney's fees, sustained by Buyer by reason of or arising out of any title defects discovered after closing and shall look to recover only from any title insurance policy for any loss incurred thereby.

No Disclosures, Warranties, or Representations Regarding Condition of Property: Seller and Seller's agents, brokers, employees, and other representatives make no warranties and disclaim any knowledge of the condition of the Property, other than as may be disclosed in the Inspection Report (as hereinafter defined), if any, that has been prepared for the Property. Seller may not have knowledge of any material facts or defects impacting the Property. Buyer acknowledges that neither the Seller nor any other person acting on its behalf, including specifically Seller's Broker (whether acting solely as Seller's Broker or as a 'transactional broker), has made any representation regarding the condition of the Property, any of the appliances or structural components that may be contained therein, its fitness for general or specific use, or any other matter affecting the Property. If an inspection report has been obtained by or on behalf of Seller or Seller's representative (the "Inspection Report(s)"), such Inspection Report may be provided to Buyer for Buyer's information only but no representation or warranty shall be made as to the accuracy or completeness of such Inspection Report and in no event shall this be deemed to be a part of the Contract. Nothing herein shall obligate Seller to procure any such Inspection Reports but Seller may provide to Buyer any Inspection Reports in Seller's possession, as for example if obtained by Seller from a previous Buyer who failed to close. If after Closing it is discovered that Seller did not provide any Inspection Report in Seller's possession, Buyer expressly waives any claim against Seller for failure to provide the same prior to Closing.

Neither Seller nor any person acting as Seller's representative has occupied the Property and no party represents or warrants that the Property conforms to local building codes, zoning requirements or any other applicable laws, rules or regulations.

Buyer acknowledges that Buyer has had the opportunity to inspect, examine and make a complete review of the Property prior to the close of escrow of the Contract. Buyer will rely solely on its own inspection and review to evaluate the condition of the Property. Buyer acknowledges that it is Buyer's sole responsibility to obtain inspection reports by qualified professionals on the appliances, structural components, alterations and additions to the Property and to determine the presence of any toxic or hazardous substances on the Property, including, but not limited to, mold, radon, asbestos and lead paint, that would make it uninhabitable or dangerous to the health of the occupants or otherwise not in compliance with law, or any other factors regarding the condition of the Property about which Buyer may be concerned.

In the event electrical, plumbing, water and/or heating services are shut down for Property preservation or other purposes, Seller will NOT reactivate these systems prior to closing. Buyer understands, acknowledges, and agrees that neither Seller nor any person acting as Seller's representative is making any warranties or representations, either expressed or implied, as to the condition of the Property. The Property is being conveyed to Buyer in "AS IS/ WHERE IS" condition and "with all faults." It is the right and

responsibility of the Buyer to inspect the Property and Buyer must satisfy himself/herself as to the condition of the Property. If Buyer fail to inspect the Property, such failure shall not under any circumstances alter, change or impair the understanding and agreement made between the Seller and Buyer as set forth herein.

Buyer shall execute at closing a Waiver and Release Regarding Property Condition. Seller, Seller's agents and Buyer shall, if the Property was built prior to 1978, execute a LEAD BASED PAINT Disclosure Addendum to Contract of Sale, a form of which shall be provided by Seller's representative. By signing this addendum, if applicable, the Buyer acknowledge that he/she have received a copy of the EPA manual "Protect Your Family from Lead in Your Home."

Buyer hereby acknowledges that Seller shall not be providing Buyer with a Real Estate Transfer Disclosure Statement and/or a Certificate of Occupancy with respect to the Property. Buyer hereby waives any requirement that Seller furnish Buyer with any such disclosure statement and/or a Certificate of Occupancy and hereby releases Seller from any and all liability resulting from the non-delivery of such disclosure statement and/or a Certificate of Occupancy.

Seller does not agree to provide building permits. It is Buyer's responsibility to confirm building and safety compliance on the Property during the inspection period. Seller is under no obligation to clear any existing municipal code and/or ordinance violations, but may in its sole discretion agree to forbear enforcement of same and/or close with an agreement to provide Buyer with an agreed upon time period after closing within which Buyer shall bring the Property into compliance. By closing, Seller does not waive any rights to continue to enforce any municipal codes which the Property may be in violation of.

By entering into this Contract, Buyer agrees to indemnify Seller and Seller's representatives and fully protect, defend and hold Seller and Seller's representatives harmless from and against any and all claims, liens, losses, damages, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller or the Property for any liens on the Property, any damage to the Property and/or injury to Buyer or any other persons that may arise from inspections, repairs, replacements. Buyer shall indemnify and fully protect, defend and hold Seller its servicers, representatives, agents, attorneys and employees harmless from any and all claims, costs, liens loss, damages, injuries, attorney's fees and expenses of every kind and nature, resulting from or arising out of any inspections, repairs, replacements or any other work performed in or upon the premises by Buyer or its agents, employees, contractors or assigns. In the event any repairs are made at the premises, or any work or material are added to the premises, or the value of the premises is enhanced in any way, then in the event this transaction does not close, all material added to the premises shall become the sole and exclusive Property of the Seller, and Seller shall have no liability to Buyer or any third party for any such material or work completed.

No Occupancy or Repairs Before Closing: Occupancy of the Property shall NOT be permitted prior to closing and funding. BUYER WILL NOT BE PERMITTED TO COMMENCE ANY REPAIRS PRIOR TO CLOSING, NOR SHALL SELLER BE REQUIRED TO MAKE ANY REPAIRS.

Multiple Offers: Buyer acknowledges that Seller may have received offers prior to or may receive offers after receipt of this offer. Buyer acknowledges that the Seller may consider all offers regarding purchase, regardless of the date of receipt of the offer and that Seller may accept or reject any offer at its sole discretion. The Contract shall not be deemed accepted by Seller until Seller's signature is affixed hereon and a fully executed original counterpart or facsimile of the Contract has been delivered to Buyer.

Limitation of Remedies: Buyer expressly waives the (a) remedy of specific performance, in the event of Seller's default, under this Agreement, (b) Buyer agrees to forgo to record or file a lis pendens or a notice of pendency of action or similar notice against all or any portion of the Property; (c) Buyer waives the right to invoke any other equitable remedy that may be available, that, if invoked, would prevent the Seller from conveying the Property to a third party buyer, (d) Buyer waives any claims or losses relating to environmental conditions affecting the Property, including but not limited to, mold, lead paint, fuel, oil, allergens or any other toxic substances of any kind, and (e) Buyer waives any claim or losses arising from encroachments, easements and/or shortages which would have been disclosed or revealed to the Buyer by a survey or inspection of the Property or by a search of the public records. In the event that the Buyer, files a claim in direct contradiction to the waivers agreed to above, or contemplated here, Buyer shall reimburse Seller for all reasonable attorney fees and costs incurred by Seller in defending such action, if Seller prevails.

No Duty to Maintain Property: Seller is under no duty to maintain or otherwise deliver the Property in the same condition as it was in at the Effective Date or at the close of Buyer's Inspection Period. In the event the Property is damaged either after the Effective Date or Inspection Period, Seller has no duty or obligation to expend any monies or other resources to repair the Property, and the same shall not excuse Buyer's performance unless the cost to repair any such damage exceeds \$2000.00, as determined in writing by an estimate provided by a contractor licensed to make such repairs or by a licensed insurance adjustor (which written estimate must accompany any notice by Buyer to terminate this Contract), in which event Buyer may elect to terminate the Contract if Seller elects to not make any repairs, and Buyer's sole remedy shall be return of Buyer's Deposit, and both parties shall thereupon be released from any liability under this Contract.

Locks, Keys, Etc.: Buyer shall at Buyer's sole expense install new locks on the Property immediately after closing, and Buyer shall hold Seller and Seller's representatives harmless from and indemnify Seller and Seller's representatives against any and all damages, claims, liens, losses, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller as a result of Buyer failure to install new locks on the Property. Seller shall not be responsible to provide any keys, garage door openers, or other access devices beyond what is in Seller's possession.

Conveyance: Seller shall convey by special warranty deed, subject to all restrictions, easements, covenants, and other matters of record.

Survey: Buyer shall obtain any desired or required survey(s) of the Property no later than the expiration of Buyer's inspection period. In the event any encroachment(s) are revealed by any survey obtained by

Buyer, Seller shall be under no obligation to cure same, and Buyer's sole remedy shall be to terminate this Contract and receive a return of Buyer's Deposit. If Buyer obtains a survey after the inspection period which reveals an encroachment as would prevent a Buyer from obtaining title insurance coverage in favor of Buyer's lender, Buyer may terminate the Contract but Seller may retain Buyer's Deposit and thereby both parties shall be release from any further liability under this Contract; provided that if the Contract is not otherwise contingent on Buyer obtaining mortgage financing, then Buyer must close notwithstanding the encroachment(s) revealed by the survey, and Seller may avail itself of specific performance.

'Restricted Persons' Not Eligible to Purchase: Unless specifically disclosed to Seller in writing at the time of the submission of Buyer's offer, and a specific written waiver is included with Seller's notification of acceptance of Buyer's offer, Buyer acknowledges that as a material inducement to Seller to enter into this Contract with Buyer, Buyer affirmatively represents to Seller that Buyer is not a 'restricted person' as defined as follows: (1) Seller's Broker, (2) Seller's Broker's employees, (3) Seller's Broker's agents, (4) any persons who are affiliated with any of the foregoing, (5) any persons who are married to any of the foregoing, (6) any persons who are first degree relatives of any of the foregoing (for the purpose of this Section term "first degree relative" means parent, child, or sibling).

If after closing Seller discovers that Buyer is a prohibited person, Seller may elect to rescind the sale of the Property to Buyer, and Buyer shall be responsible for all of Seller's costs and attorney's fees if Seller shall elect to rescind the sale.

Addendum to Survive Closing: Buyer acknowledges that the terms and condition of this Addendum shall survive the closing.

Buyer:

AuthenticSign
Tommy E. Ratcliffe 11/02/21
Date

Date

Seller

City of Palm Bay, a Florida municipal corporation

Suzanne Sherman 11-19-2021
By: Suzanne Sherman Date
As: City Manager

Port Malabar Holiday Park Purchase Addendum

Seller makes no claim of title (ownership) to the manufactured home(s) currently situated on the land and will convey marketable title of the land only to the Buyer by special warranty deed. Buyer expressly acknowledges that this Contract is for the sale and purchase of the land described therein only and is not for the sale and purchase of the manufactured home(s) which is/are currently situated on the land.

Seller is under no obligation to demolish or remove the manufactured home(s) from the property prior to closing, and Buyer, by making an offer to enter into this Contract with Seller, acknowledges same.

Buyer further acknowledges that the property lies within the Port Malabar Holiday Park Mobile Home Park Recreation District (PMHPMHRD), a Florida Special Taxing District (RECREATION DISTRICT) and is governed by rules, regulations and deed restrictions and the district Trustees consider the presence of the manufactured home(s) on the property to be a violation of its covenants and restrictions due to (among other reasons) the deteriorated condition of the manufactured home(s).

Any and all costs associated with demolition and/or removal of the manufactured home(s) from the property shall be borne by Buyer.

Buyer will indemnify and hold Seller, Seller's broker(s), agents, employees, harmless for any loss or damages arising from any claims from the owner of the manufactured home(s) for improper demolition, destruction, and/or removal of the manufactured homes from the property.

The provisions of this Addendum will survive closing.

Authentisign
Tommy E. Ratcliffe
Buyer

11/02/21
Date

Buyer
[Signature] City Manager
Seller

11-19-2021
Date

RESOLUTION 2022-03

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, SELLING AND CONVEYING PROPERTY AS RECORDED IN PLAT BOOK 22, PAGES 125 THROUGH 137, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has contracted to sell and convey the following described property to Tommy E. Ratcliffe ("Purchaser"):

Lot 14, Block 14, Port Malabar Holiday Park Unit One, according to the map or plat thereof as recorded in Plat Book 22, Page(s) 125 through 137, of the Public Records of Brevard County, Florida; Section 33, Township 28S, Range 37E; containing 0.12 acres, more or less;

Said property being more commonly known as 171 Holiday Park Boulevard NE, Palm Bay, Florida 32907, and

WHEREAS, the City has no plans to develop said Property and that it is unnecessary for public purposes, and

WHEREAS, the City has determined that the sale of said Property is in the best interest of the Public, and

WHEREAS, the City has authorized its sale and authorized the City Manager to execute all necessary documents to convey the Property to the Purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay has hereby determined that said property is unnecessary for the City's public purposes.

SECTION 2. The City of Palm Bay has hereby determined that disposal of said property, as described above, is in the best interest of the public.

SECTION 3. The City of Palm Bay hereby authorizes the conveyance of said property to Tommy E. Ratcliffe by City Manager, Suzanne Sherman, pursuant to the applicable Florida Statutes.

SECTION 4. The City of Palm Bay specifically releases any automatic reservation and right of entry in accordance with Section 270.11, Florida Statutes.

SECTION 5. This Resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2022-XX, of the City Council of the City of Palm Bay, Brevard County, Florida, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

cc: Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nancy A. Bunt, Community & Economic Development Director

DATE: 1/6/2022

RE: Resolution 2022-04, conveying City-owned surplus real estate located at 340 Holiday Park Boulevard NE to buyer Stephen Gower (\$20,875).

In 2019, the City acquired a 0.12-acre lot located at 340 Holiday Park Boulevard NE in Port Malabar Holiday Park Mobile Home Recreation District (Holiday Park) through escheatment by Brevard County for nonpayment of taxes pursuant to the tax certificates/tax deeds sale procedures of the Chapter 197, Florida Statutes.

On August 20, 2020, City Council declared this property as surplus real estate. This property has been listed for sale through the City's contract residential real estate broker, Ellingson Properties, LLC.

Ellingson Properties prepared a Comparative Market Analysis (CMA) with a suggested list price of \$15,875. Following review, the City requested the broker list this property at the value of the highest comparable, which was \$20,875. On October 15, 2021, the City Council accepted a purchase offer of \$20,875 from buyer Mr. Stephen Gower.

It is important to note that, several issues associated with this property. While the City has title to the land, it does not have clear title to the mobile home. Any interested buyer, at their own expense, would need to subsequently file a title action related to the mobile home, which is in severe disrepair as the home has been neglected for years. The Buyer accepts the property as-is and understands that the title action and all other remedies to the property or mobile home is at the Buyer's expense. Second, the mobile home on the property is deemed uninhabitable and will need to be removed from the property at the expense of the buyer after obtaining clear title. Third, the property lies within the Port Malabar Holiday Park Mobile Home Park Recreation District and is governed by rules, regulations and deed restrictions. As such, two significant requirements are: the unit remains owner occupied, and the person(s) must be 55 years or older.

REQUESTING DEPARTMENT:

Community & Economic Development

FISCAL IMPACT:

Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

RECOMMENDATION:

Motion to adopt a Resolution conveying City-owned surplus real estate located at 340 Holiday Park Blvd. NE with buyer Mr. Stephen Gower.

ATTACHMENTS:

Description

Purchase Contract

Resolution 2022-04

Authentication ID: 258E8085-872B-EC11-981F-501AC544F02B

"AS IS" Residential Contract For Sale And Purchase
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

Florida Realtors®

1* **PARTIES:** City Of Palm Bay ("Seller"),
2* and Stephen Gower ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase
5 and any riders and addenda ("Contract"):

6 **1. PROPERTY DESCRIPTION:**

7* (a) Street address, city, zip: 340 Holiday Park Boulevard NE Palm Bay 32907
8* (b) Located in: Brevard County, Florida. Property Tax ID #: 28-37-32-L-00016.0-0015.00
9* (c) Real Property: The legal description is
10 PORT MALABAR HOLIDAY PARK UNIT 1 1ST REPLAT IN LOT 15 BLK 16

11 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
12 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
13 by other terms of this Contract.

14 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items
15 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the
16 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),
17 drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate
18 and other access devices, and storm shutters/panels ("Personal Property").
19 Other Personal Property Items included in this purchase are:

20* Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
21 (e) The following items are excluded from the purchase:

PURCHASE PRICE AND CLOSING

22* **2. PURCHASE PRICE (U.S. currency):**\$ 20,875.00

23* (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION)\$ 5,000.00
24 The initial deposit made payable and delivered to "Escrow Agent" named below
25 (CHECK ONE): (i) ☐ accompanies offer or (ii) ☒ is to be made within 3 (if left
26 blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN
27 OPTION (ii) SHALL BE DEEMED SELECTED.

28 Escrow Agent Information: Name: E Title Services, LLC
29 Address: 5815 S US 1 Rockledge FL 32955
30 Phone: 321-450-4770 E-mail: luf@titlebrevard.com Fax:

31 (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10)
32 days after Effective Date\$

33 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")
34 (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8.....

35 (d) Other:\$

36 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
37 transfer or other COLLECTED funds\$ 15,875.00

38 NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.

39 **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

40 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before
41 _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to
42 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day
43 the counter-offer is delivered.

44 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or
45 initialed and delivered this offer or final counter-offer ("Effective Date").

46 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur
47 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered
48 ("Closing") on January 7, 2022 ("Closing Date"), at the time established by the Closing Agent.

Buyer's Initials SG
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Seller's Initials SG

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5. EXTENSION OF CLOSING DATE:

- (a) If Paragraph 8(b) is checked and Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.
- (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

6. OCCUPANCY AND POSSESSION:

- (a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy.
- (b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

- 7. ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☒ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

FINANCING

8. FINANCING:

☒ (a) Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer's lender(s) or by CFPB Requirements shall not affect or extend the Buyer's obligation to close or otherwise affect any terms or conditions of this Contract.

☐ (b) This Contract is contingent upon Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) loan within _____ (if left blank, then 30) days after Effective Date ("Loan Approval Period") for **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ (if left blank, then 30) years ("Financing").

(i) Buyer shall make mortgage loan application for the Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing terms ("Loan Approval") and thereafter to close this Contract. Loan Approval which requires a condition related to the sale by Buyer of other property shall not be deemed Loan Approval for purposes of this subparagraph.

Buyer's failure to use diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information and paying of all fees and charges requested by Buyer's mortgage broker and lender in connection with Buyer's mortgage loan application.

(ii) Buyer shall keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, Loan Approval, and loan processing and authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status and progress, and release preliminary and finally executed closing disclosures and settlement statements, to Seller and Broker.

(iii) Upon Buyer obtaining Loan Approval, Buyer shall promptly deliver written notice of such approval to Seller.

(iv) If Buyer is unable to obtain Loan Approval after the exercise of diligent effort, then at any time prior to expiration of the Loan Approval Period, Buyer may provide written notice to Seller stating that Buyer has been unable to obtain Loan Approval and has elected to either:

- (1) waive Loan Approval, in which event this Contract will continue as if Loan Approval had been obtained; or
(2) terminate this Contract.

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Seller's Initials JK

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(v) If Buyer fails to timely deliver either notice provided in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Loan Approval shall be deemed waived, in which event this Contract will continue as if Loan Approval had been obtained, provided however, Seller may elect to terminate this Contract by delivering written notice to Buyer within 3 days after expiration of the Loan Approval Period.

(vi) If this Contract is timely terminated as provided by Paragraph 8(b)(iv)(2) or (v), above, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vii) If Loan Approval has been obtained, or deemed to have been obtained, as provided above, and Buyer fails to close this Contract, then the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; (2) Property related conditions of the Loan Approval have not been met (except when such conditions are waived by other provisions of this Contract); or (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Approval, in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see rider for terms).

☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other: N/A

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9 (c)(iii) is checked.)
- Other: N/A

(c) **TITLE EVIDENCE AND INSURANCE:** At least 15 (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 159 or 170, F.S., in favor of any governmental body, authority or agency.

(CHECK ONE):

☒ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

Buyer's Initials



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Seller's Initials



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- ☐ (iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$_____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.
- (d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☒ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed \$_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (**CHECK ONE**):
- ☒ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.
- ☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
- IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed. If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

Buyer's Initials

SG

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Seller's Initials

SS

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- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE:** BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

- (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have 10 (If left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.
- (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
- (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,

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consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

- (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

- 13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

- 14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

- 15. DEFAULT:**

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be **relieved from all further obligations under**

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this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

- (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

- 16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

- 17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,

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[Handwritten Signature]

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real 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 names of all such general contractors, subcontractors, suppliers and materialmen, 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.

F. TIME: Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Orders ("GTOs"), then Buyer shall provide Closing Agent with the information related to Buyer and the transaction contemplated by this Contract that is required to complete IRS Form 8300, and Buyer consents to Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 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; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded 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; and (4) if Buyer fails to make timely demand for refund of the Deposit, 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.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over 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 to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on 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 prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior 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 Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

T. RESERVED.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. BUYER WAIVER OF CLAIMS: *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

ADDENDA AND ADDITIONAL TERMS

19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- | | | |
|--|---|---|
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> K. RESERVED | <input type="checkbox"/> T. Pre-Closing Occupancy |
| <input checked="" type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> L. RESERVED | <input type="checkbox"/> U. Post-Closing Occupancy |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> V. Sale of Buyer's Property |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> W. Back-up Contract |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> X. Kick-out Clause |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978) | <input type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> H. Homeowners/Flood Ins. | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> I. RESERVED | <input type="checkbox"/> S. Lease Purchase/ Lease Option | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> J. Interest-Bearing Acct. | | <input type="checkbox"/> CC. Miami-Dade County Special Taxing District Disclosure |
| | | <input type="checkbox"/> Other: |

20. ADDITIONAL TERMS:

- 1) Port Malabar Holiday Park Recreation District Disclosure
- 2) Port Malabar Holiday Park Purchase Addendum
- 3) Addendum "A" to Contract
- 4) E Title Services ABA Disclosure Statement
- 5) Offer Acceptance Acknowledgement
- 6) Seller's Property Disclosure Update
- 7) Utilities Acknowledgement
- 8) Lead Based Paint Disclosure

Buyer acknowledges that there is an application for purchase/registration that needs to be taken to the Holiday Park Business office suggested to call them for info at 321-724-2240. Buyer understands that this property is not habitable and it is the buyers responsibility to remove mobile home and concrete pad.

COUNTER-OFFER/REJECTION

- ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and deliver a copy of the acceptance to Seller).
- ☐ Seller rejects Buyer's offer.

Buyer's Initials **SG**
Florida Realtors/Florida Bar-ASIS-5x

Page 11 of 12

Seller's Initials **SH**

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592 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**
 593 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

594 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

595 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the*
 596 *terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and*
 597 *conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all*
 598 *interested persons.*

599 **AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK**
 600 **TO BE COMPLETED.**

601¹² Buyer: Stephen Gower Date: 10/12/2021
 602^{*} Buyer: Stephen Gower Date: _____
 603^{*} Seller: [Signature] City Manager Date: X 12-9-2021
 604¹⁷ Seller: Palm Bay City Of Date: _____

605 Buyer's address for purposes of notice Seller's address for purposes of notice
 606^{*} _____
 607^{*} _____
 608^{*} _____

609 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers
 610 entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct
 611 Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage
 612 agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has
 613 retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation
 614 made by Seller or Listing Broker to Cooperating Brokers.

615^{*} Jamel Brintley Gregory Ellingson
 616 **Cooperating Sales Associate, if any** **Listing Sales Associate**
 617^{*} Ellingson Properties, LLC Ellingson Properties
 618 **Cooperating Broker, if any** **Listing Broker**

12/7/21, 5:02 PM

Form Simplicity



Addendum to Contract


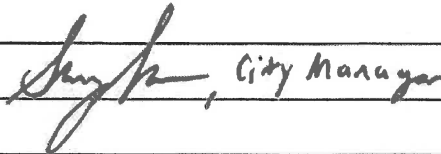
Addendum No. B to the Contract with the Effective Date of December 6, 2021 between

City of Palm Bay (Seller)
and Stephen Gower (Buyer)

concerning the property described as: 340 Holiday Park Blvd, Palm Bay, FL 32907

(the "Contract"). Seller and Buyer make the following terms and conditions part of the Contract:

Buyer will initiate the process of obtaining a "Tax Deed Search Certificate" by paying the initial \$900 fee to ClearToSell.com. If ClearToSell.com is able to provide a Tax Deed Certificate the Buyer will proceed to pay the \$1,850 to continue the process to obtain the Tax Deed Search Certificate. Seller and Buyer agree that Buyer will only go to closing if the property can be transferred with clear title. Timelines for inspections and closing will be adjusted accordingly at 35 days from executed addendum.

Buyer:  Stephen Gower
Buyer: _____
Seller: X  City Manager
Seller: _____

Date: 12/10/21
Date: _____
Date: X 12-9-2021
Date: _____

ACSP-4 Rev 6/17
Serial#: 048702-900163-9914535

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Form
Simplicity

Addendum 'A' to Contract

The Addendum is made to the Contract between the City of Palm Bay, a Florida municipal corporation, as Seller, and Stephen Gower as Buyer, for the sale and purchase of the Property at 340 Holiday Park Blvd NE Palm Bay, FL 32907, as follows, and the provisions, terms, and conditions stated herein shall be controlling over any provision, term, or condition to the contrary contained in the remainder of the Contract.

No Conveyance of Personal property: Seller is not hereby selling or agreeing to convey any personal property and makes no representations or warranties regarding the same. Seller will not provide a bill of sale or any other document of conveyance or assignment of any warranties, etc. for any personal property located on the premises. Seller abandons any and all such personal property located on the premises at the Effective Date unless specifically excluded by addendum and shall not be responsible for removal of the same. If any such personal property located on the premises at the Effective Date shall be damaged, destroyed, lost, or stolen during the pendency of the Contract prior to Closing, the same shall not excuse Buyer's performance in any way Buyer's obligations under this Contract including Buyer's obligation to close.

All prorations at closing final: All prorations, including but not limited to, any and all taxes, fees, utilities, homeowners or condominium association assessments and dues and any other charges against the Property as reflected on the settlement statement executed by the Seller are FINAL. No adjustments or payments will be made by Seller post-closing. Tax prorations are based on the last known tax year or current tax bill if available. Special assessments will be prorated up to the Closing Date regardless if said assessments are due in full or in future installments. Any special assessments levied and payable in installments shall be prorated to the Closing Date and shall be assumed and paid by Buyer from the Closing Date forward. In no instance shall the Seller be responsible for the payment of any assessment pending but not levied as of the Closing Date.

No Duty to Cure Title Defects: Seller's obligations under this Contract are subject to Seller's ability to deliver marketable title. Seller has no obligation to expend any money to cure any defect in title. Buyer's sole remedy is limited to a return of Buyer's Deposit. Under no circumstances shall Seller be obligated to reimburse Buyer for any of Buyer's expenses in inspecting the Property.

If in Seller's sole discretion Seller finds that it is not able to convey marketable title without expenditure of monies or other resources, Seller has the sole discretion to either extend the contract or terminate the contract and return all earnest money to Buyer upon termination.

If Seller elects to extend this Contract of Sale, Seller shall have a minimum 30 days to resolve any title defects before terminating the Contract. If in Seller's sole discretion Seller is not able to cure any title defects within the 30 day period, either Buyer or Seller has the option to immediately terminate this Contract of Sale, with no further obligation, and all earnest money will be returned to Buyer. Buyer and anyone claiming by, through, or under Buyer, including any mortgagees of Buyer, agree to hold Seller

harmless from all liabilities, losses, costs, charges, expenses and damages of any type whatsoever, including reasonable attorney's fees, sustained by Buyer by reason of or arising out of any title defects discovered after closing and shall look to recover only from any title insurance policy for any loss incurred thereby.

No Disclosures, Warranties, or Representations Regarding Condition of Property: Seller and Seller's agents, brokers, employees, and other representatives make no warranties and disclaim any knowledge of the condition of the Property, other than as may be disclosed in the Inspection Report (as hereinafter defined), if any, that has been prepared for the Property. Seller may not have knowledge of any material facts or defects impacting the Property. Buyer acknowledges that neither the Seller nor any other person acting on its behalf, including specifically Seller's Broker (whether acting solely as Seller's Broker or as a 'transactional broker'), has made any representation regarding the condition of the Property, any of the appliances or structural components that may be contained therein, its fitness for general or specific use, or any other matter affecting the Property. If an inspection report has been obtained by or on behalf of Seller or Seller's representative (the "Inspection Report(s)"), such Inspection Report may be provided to Buyer for Buyer's information only but no representation or warranty shall be made as to the accuracy or completeness of such Inspection Report and in no event shall this be deemed to be a part of the Contract. Nothing herein shall obligate Seller to procure any such Inspection Reports but Seller may provide to Buyer any Inspection Reports in Seller's possession, as for example if obtained by Seller from a previous Buyer who failed to close. If after Closing it is discovered that Seller did not provide any Inspection Report in Seller's possession, Buyer expressly waives any claim against Seller for failure to provide the same prior to Closing.

Neither Seller nor any person acting as Seller's representative has occupied the Property and no party represents or warrants that the Property conforms to local building codes, zoning requirements or any other applicable laws, rules or regulations.

Buyer acknowledges that Buyer has had the opportunity to inspect, examine and make a complete review of the Property prior to the close of escrow of the Contract. Buyer will rely solely on its own inspection and review to evaluate the condition of the Property. Buyer acknowledges that it is Buyer's sole responsibility to obtain inspection reports by qualified professionals on the appliances, structural components, alterations and additions to the Property and to determine the presence of any toxic or hazardous substances on the Property, including, but not limited to, mold, radon, asbestos and lead paint, that would make it uninhabitable or dangerous to the health of the occupants or otherwise not in compliance with law, or any other factors regarding the condition of the Property about which Buyer may be concerned.

In the event electrical, plumbing, water and/or heating services are shut down for Property preservation or other purposes, Seller will NOT reactivate these systems prior to closing. Buyer understands, acknowledges, and agrees that neither Seller nor any person acting as Seller's representative is making any warranties or representations, either expressed or implied, as to the condition of the Property. The Property is being conveyed to Buyer in "AS IS/ WHERE IS" condition and "with all faults." It is the right and

responsibility of the Buyer to inspect the Property and Buyer must satisfy himself/herself as to the condition of the Property. If Buyer fail to inspect the Property, such failure shall not under any circumstances alter, change or impair the understanding and agreement made between the Seller and Buyer as set forth herein.

Buyer shall execute at closing a Waiver and Release Regarding Property Condition. Seller, Seller's agents and Buyer shall, if the Property was built prior to 1978, execute a LEAD BASED PAINT Disclosure Addendum to Contract of Sale, a form of which shall be provided by Seller's representative. By signing this addendum, if applicable, the Buyer acknowledge that he/she have received a copy of the EPA manual "Protect Your Family from Lead in Your Home."

Buyer hereby acknowledges that Seller shall not be providing Buyer with a Real Estate Transfer Disclosure Statement and/or a Certificate of Occupancy with respect to the Property. Buyer hereby waives any requirement that Seller furnish Buyer with any such disclosure statement and/or a Certificate of Occupancy and hereby releases Seller from any and all liability resulting from the non-delivery of such disclosure statement and/or a Certificate of Occupancy.

Seller does not agree to provide building permits. It is Buyer' responsibility to confirm building and safety compliance on the Property during the inspection period. Seller is under no obligation to clear any existing municipal code and/or ordinance violations, but may in its sole discretion agree to forbear enforcement of same and/or close with an agreement to provide Buyer with an agreed upon time period after closing within which Buyer shall bring the Property into compliance. By closing, Seller does not waive any rights to continue to enforce any municipal codes which the Property may be in violation of.

By entering into this Contract, Buyer agrees to indemnify Seller and Seller's representatives and fully protect, defend and hold Seller and Seller's representatives harmless from and against any and all claims, liens, losses, damages, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller or the Property for any liens on the Property, any damage to the Property and/or injury to Buyer or any other persons that may arise from Inspections, repairs, replacements. Buyer shall indemnify and fully protect, defend and hold Seller its servicers, representatives, agents, attorneys and employees harmless from any and all claims, costs, liens loss, damages, injuries, attorney's fees and expenses of every kind and nature, resulting from or arising out of any inspections, repairs, replacements or any other work performed in or upon the premises by Buyer or its agents, employees, contractors or assigns. In the event any repairs are made at the premises, or any work or material are added to the premises, or the value of the premises is enhanced in any way, then in the event this transaction does not close, all material added to the premises shall become the sole and exclusive Property of the Seller, and Seller shall have no liability to Buyer or any third party for any such material or work completed.

No Occupancy or Repairs Before Closing: Occupancy of the Property shall NOT be permitted prior to closing and funding. BUYER WILL NOT BE PERMITTED TO COMMENCE ANY REPAIRS PRIOR TO CLOSING, NOR SHALL SELLER BE REQUIRED TO MAKE ANY REPAIRS.

Multiple Offers: Buyer acknowledges that Seller may have received offers prior to or may receive offers after receipt of this offer. Buyer acknowledges that the Seller may consider all offers regarding purchase, regardless of the date of receipt of the offer and that Seller may accept or reject any offer at its sole discretion. The Contract shall not be deemed accepted by Seller until Seller's signature is affixed hereon and a fully executed original counterpart or facsimile of the Contract has been delivered to Buyer.

Limitation of Remedies: Buyer expressly waives the (a) remedy of specific performance, in the event of Seller's default, under this Agreement, (b) Buyer agrees to forgo to record or file a lis pendens or a notice of pendency of action or similar notice against all or any portion of the Property; (c) Buyer waives the right to invoke any other equitable remedy that may be available, that, if invoked, would prevent the Seller from conveying the Property to a third party buyer, (d) Buyer waives any claims or losses relating to environmental conditions affecting the Property, including but not limited to, mold, lead paint, fuel, oil, allergens or any other toxic substances of any kind, and (e) Buyer waives any claim or losses arising from encroachments, easements and/or shortages which would have been disclosed or revealed to the Buyer by a survey or inspection of the Property or by a search of the public records. In the event that the Buyer, files a claim in direct contradiction to the waivers agreed to above, or contemplated here, Buyer shall reimburse Seller for all reasonable attorney fees and costs incurred by Seller in defending such action, if Seller prevails.

No Duty to Maintain Property: Seller is under no duty to maintain or otherwise deliver the Property in the same condition as it was in at the Effective Date or at the close of Buyer's Inspection Period. In the event the Property is damaged either after the Effective Date or Inspection Period, Seller has no duty or obligation to expend any monies or other resources to repair the Property, and the same shall not excuse Buyer's performance unless the cost to repair any such damage exceeds \$2000.00, as determined in writing by an estimate provided by a contractor licensed to make such repairs or by a licensed insurance adjustor (which written estimate must accompany any notice by Buyer to terminate this Contract), in which event Buyer may elect to terminate the Contract if Seller elects to not make any repairs, and Buyer's sole remedy shall be return of Buyer's Deposit, and both parties shall thereupon be released from any liability under this Contract.

Locks, Keys, Etc.: Buyer shall at Buyer's sole expense install new locks on the Property immediately after closing, and Buyer shall hold Seller and Seller's representatives harmless from and indemnify Seller and Seller's representatives against any and all damages, claims, liens, losses, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller as a result of Buyer failure to install new locks on the Property. Seller shall not be responsible to provide any keys, garage door openers, or other access devices beyond what is in Seller's possession.

Conveyance: Seller shall convey by special warranty deed, subject to all restrictions, easements, covenants, and other matters of record.

Survey: Buyer shall obtain any desired or required survey(s) of the Property no later than the expiration of Buyer's inspection period. In the event any encroachment(s) are revealed by any survey obtained by


Buyer, Seller shall be under no obligation to cure same, and Buyer's sole remedy shall be to terminate this Contract and receive a return of Buyer's Deposit. If Buyer obtains a survey after the inspection period which reveals an encroachment as would prevent a Buyer from obtaining title insurance coverage in favor of Buyer's lender, Buyer may terminate the Contract but Seller may retain Buyer's Deposit and thereby both parties shall be release from any further liability under this Contract; provided that if the Contract is not otherwise contingent on Buyer obtaining mortgage financing, then Buyer must close notwithstanding the encroachment(s) revealed by the survey, and Seller may avail itself of specific performance.

'Restricted Persons' Not Eligible to Purchase: Unless specifically disclosed to Seller in writing at the time of the submission of Buyer's offer, and a specific written waiver is included with Seller's notification of acceptance of Buyer's offer, Buyer acknowledges that as a material inducement to Seller to enter into this Contract with Buyer, Buyer affirmatively represents to Seller that Buyer is not a 'restricted person' as defined as follows: (1) Seller's Broker, (2) Seller's Broker's employees, (3) Seller's Broker's agents, (4) any persons who are affiliated with any of the foregoing, (5) any persons who are married to any of the foregoing, (6) any persons who are first degree relatives of any of the foregoing (for the purpose of this Section term "first degree relative" means parent, child, or sibling).

If after closing Seller discovers that Buyer is a prohibited person, Seller may elect to rescind the sale of the Property to Buyer, and Buyer shall be responsible for all of Seller's costs and attorney's fees if Seller shall elect to rescind the sale.


Addendum to Survive Closing: Buyer acknowledges that the terms and condition of this Addendum shall survive the closing.

Buyer:

	10/12/21
_____	_____
	Date
_____	_____
	Date

Seller

City of Palm Bay, a Florida municipal corporation

	12-6-2021
By: _____	_____
As: <u>City Manager</u>	Date

Port Malabar Holiday Park Purchase Addendum

Seller makes no claim of title (ownership) to the manufactured home(s) currently situated on the land and will convey marketable title to the land only to the Buyer by special warranty deed.

Buyer expressly acknowledges that this Contract is for the sale and purchase of the land described therein only and is not for the sale and purchase of the manufactured home(s) which is/are currently situated on the land.

Seller is under no obligation to demolish or remove the manufactured home(s) from the property prior to closing, and Buyer, by making an offer to enter into this Contract with Seller, acknowledges same.

Buyer acknowledges that Buyer must, within three business days after closing, make application with the City of Palm Bay for a permit to demolish and remove the manufactured home(s) from the property, and once obtained will use Buyer's best efforts to expedite the demolition and removal of the manufactured home(s) from the land as soon as practicable but in no case longer than 90 days after the closing by a licensed bonded and insured contractor.

Any and all costs associated with demolition and/or removal of the manufactured home(s) from the property shall be borne by Buyer.

Buyer further acknowledges that the property lies within the Port Malabar Holiday Park Mobile Home Park Recreation District, a Florida Special Taxing District (RECREATION DISTRICT) and is governed by rules, regulations and deed restrictions and the district Trustees consider the presence of the manufactured home(s) on the property to be a violation of its covenants and restrictions due to (among other reasons) the deteriorated condition of the manufactured home(s), and further that Seller and PMHPPOA have come to an agreement to accommodate the removal by Buyer of the manufactured homes from the property within a period of no longer than 120 days after closing, but that after such time, the RECREATION DISTRICT may, at its sole and absolute discretion, take any and all action it sees fit within the covenants and restrictions of the RECREATION DISTRICT governing documents to enforce same.

Buyer agrees to keep the RECREATION DISTRICT informed in writing, no less than once every 30 days, of Buyer's progress in removing the manufactured home(s) from the property, including at a minimum 1) advising the RECREATION DISTRICT of when Buyer has made application for the demolition and removal permit(s) from the City, including providing the RECREATION DISTRICT a copy of such application and 2) providing the RECREATION DISTRICT with a copy of the permit(s) once obtained, and 3) when Buyer has

made a contract with a licensed, bonded, insured contractor to professionally remove the manufactured home(s) from the property, including providing a copy of such contract to the RECREATION DISTRICT, with proof of the contractor's licensure and insurance, and such other reasonable documentation as the RECREATION DISTRICT may require.

Buyer will indemnify and hold Seller, Seller's broker(s), agents, employees harmless for any loss or damages arising from any claims from the owner of the manufactured home(s) for improper demolition, destruction, and/or removal of the manufactured homes from the property.

The provisions of this Addendum will survive closing.

Amended
Stephen Gower

10/12/21

Buyer

Date

Buyer

Date

[Signature]
Seller

12-6-2021
Date

RESOLUTION 2022-04

A RESOLUTION OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, SELLING AND CONVEYING PROPERTY AS RECORDED IN PLAT BOOK 26, PAGES 12 THROUGH 16, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay has contracted to sell and convey the following described property to Stephen Gower ("Purchaser"):

Lot 15, Block 16, First Replat in Port Malabar Holiday Park Unit One, according to the map or plat thereof as recorded in Plat Book 26, Page(s) 12 through 16, of the Public Records of Brevard County, Florida; Section 32, Township 28S, Range 37E; containing 0.12 acres, more or less;

Said property being more commonly known as 340 Holiday Park Boulevard NE, Palm Bay, Florida 32907, and

WHEREAS, the City has no plans to develop said Property and that it is unnecessary for public purposes, and

WHEREAS, the City has determined that the sale of said Property is in the best interest of the Public, and

WHEREAS, the City has authorized its sale and authorized the City Manager to execute all necessary documents to convey the Property to the Purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay has hereby determined that said property is unnecessary for the City's public purposes.

SECTION 2. The City of Palm Bay has hereby determined that disposal of said property, as described above, is in the best interest of the public.

SECTION 3. The City of Palm Bay hereby authorizes the conveyance of said property to Stephen Gower by City Manager, Suzanne Sherman, pursuant to the applicable Florida Statutes.

SECTION 4. The City of Palm Bay specifically releases any automatic reservation and right of entry in accordance with Section 270.11, Florida Statutes.

SECTION 5. This Resolution shall take effect immediately upon the enactment date.

This resolution was duly enacted at Meeting 2022-XX, of the City Council of the City of Palm Bay, Brevard County, Florida, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

cc: Brevard County Recording



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Patricia Smith, City Attorney

DATE: 1/6/2022

RE: Ordinance 2022-10, amending the Code of Ordinances, Chapter 52, Boards, Subchapter 'Code Enforcement Board', by repealing the subchapter in its entirety, first reading.

City Council has directed staff to transition Code Enforcement from the Code Enforcement Board to a Special Magistrate. The City currently has a Request for Proposals for a Code Special Magistrate. Staff anticipates bringing a recommendation to award to Council on February 17, 2022. The Special Magistrate would hear cases beginning April 2022. Consequently, the ordinance repealing the Code Enforcement Board is effective April 1, 2022.

REQUESTING DEPARTMENT:

Growth Management, City Attorney's Office

RECOMMENDATION:

Motion to approve the repeal of Ordinance.

ATTACHMENTS:

Description

Ordinance 2022-10

ORDINANCE 2022-10

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE V, LEGISLATIVE, CHAPTER 52, BOARDS, SUBCHAPTER 'CODE ENFORCEMENT BOARD', BY REPEALING THE SUBCHAPTER IN ITS ENTIRETY; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR DELETION FROM THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 52, Boards, Subchapter 'Code Enforcement Board', is hereby repealed in its entirety:

~~"CODE ENFORCEMENT BOARD~~

~~§ 52.080 INTENT.~~

~~It is the intent of this subchapter to promote, protect, and improve the health, safety, and welfare of the citizens of the city, by creating a board with authority to impose fines and other noncriminal penalties when there is a violation of any of the provisions of the codes and ordinances of the city and to provide an equitable, expeditious, effective, fair and inexpensive method of enforcing the codes and ordinances of the city. This subchapter is enacted pursuant to the authority granted by both F.S. Ch. 162, and the home rule powers vested in the city. The Code Enforcement Board created hereunder shall be known as the "City of Palm Bay Code Enforcement Board."~~

~~§ 52.081 ADOPTION.~~

~~Florida Statutes Ch. 162, Local Government Boards Act, as amended, is hereby adopted and, by this reference, incorporated herein and made an integral part of this subchapter as if fully set forth herein.~~

~~§ 52.082 DEFINITIONS.~~

~~For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates a different meaning.~~

~~**BOARD.** The city's Code Enforcement Board.~~

~~**COMMUNITY STANDARDS COORDINATOR.** The person designated by the City Manager to ensure compliance with and enforcement of this subchapter and any other city ordinance, and the preparation necessary for the proper functioning of the Code Enforcement Board.~~

~~**RESIDENT.** A person who is a United States citizen and has resided within the city for at least six (6) months immediately prior to an appointment to the Code Enforcement Board.~~

~~**SPECIAL MAGISTRATE.** An individual recommended by the City Attorney and appointed by the City Council to preside over requests to compromise or settle code enforcement matters either through a properly filed Petition for Relief or in settlement of pending litigation. The Special Magistrate shall be an attorney, licensed to practice law in the State of Florida for no less than five (5) years, and may serve concurrently as the Code Enforcement Board attorney authorized by § 52.085. The Special Magistrate may serve ex officio as the Special Magistrate or Hearing Officer called to adjudicate any other ordinance of the city. Attorneys who are city residents, city property owners, or have their place of employment within the city will be given special consideration.~~

~~**§ 52.083 JURISDICTION.**~~

~~The Board shall have jurisdiction to hear and decide cases in which any violation of any provision, section or portion of this Code of Ordinances is alleged.~~

~~**§ 52.084 ORGANIZATION.**~~

~~(A) The board shall consist of seven (7) city residents appointed by the City Council. Each Council seat shall appoint one (1) member.~~

~~(B) The two (2) remaining members' positions shall be considered at-large. The members shall be selected by using the City Council's process for filling board positions.~~

~~(C) The Board shall select a chairperson and a vice chairperson. The chairperson and vice chairperson shall serve for a term of two (2) years. The vice chairperson shall automatically succeed the chairperson.~~

~~(D) There shall be an election of officers at the annual Board meeting held each January.~~

~~(E) A member of the Board may serve unlimited terms as an officer of the Board, including successive terms.~~

~~**§ 52.085 LEGAL COUNSEL.**~~

~~The City Attorney shall act as counsel for the city in all matters that come before the Board. The City Council may appoint an attorney who is a practicing member of the Florida Bar, either residing or practicing in Brevard County, to represent the Board when required. The attorney shall be compensated as provided by the City Council.~~

~~§ 52.086 LIENS.~~

~~Liens created pursuant to a Board order and recorded in the public record shall bear simple interest at a rate not to exceed the legal rate allowed for such liens and may be foreclosed pursuant to the procedure set forth in Fla. Stat. Ch. 162.~~

~~§ 52.087 OTHER REMEDIES.~~

~~(A) The provisions and procedures contained in this subchapter shall be in addition and supplemental to any other remedies now existing or subsequently provided for by law regarding violations of this Code and any other ordinance of the city.~~

~~(B) *Costs of enforcement.*~~

~~(1) If the city prevails in enforcing a case before the Board, it shall be entitled to recover all costs incurred in enforcing the case before the Board, and in any appeals from the Board's order. Such costs include but shall not be limited to: investigative costs, administrative costs, prosecution costs, and preparation of the record on appeal.~~

~~(2) The City Council may, by resolution, establish uniform schedules to be imposed on code enforcement cases that appear before the Board to cover all costs of enforcement.~~

~~§ 52.088 FINANCE DISCLOSURE; CONFLICT OF INTEREST.~~

~~The following provisions shall apply to the members of the Board:~~

~~(A) Upon appointment, each member of the Board shall be subject to the provisions of Fla. Stat. Ch. 112.3145, relating to financial disclosure by local officers. Failure on the part of a member of the Board to comply with said provisions shall result in immediate removal of such member from the Board.~~

~~(B) For a period of one (1) year from the date of termination, resignation, or removal from office as a member of the Board, such person is hereby expressly prohibited from acting as agent or attorney in any proceeding, petition or other matter before the Board.~~

~~(C) — If a Board member has a conflict of interest with regard to an alleged violation, said member shall comply with the provisions of Fla. Stat. Ch. 112, §§ 112.311 through 112.326.~~

~~(D) — No Board member shall communicate with any respondent outside of a hearing concerning a violation. This restriction shall extend to any person appearing or interceding on behalf of a respondent, whether or not such person may have a direct personal or financial interest in the property involved in the alleged violation.~~

~~(E) — Violation on the part of a member of the Board of the provisions of this section shall result in immediate removal of such member from the Board by the City Council.~~

~~§ 52.089 FINES IN EXCESS OF STATUTORY LIMITS.~~

~~(A) — When the Code Enforcement Board determines that the factors and criteria set out in subsection (B) herein exist in any matters regarding violations of the Palm Bay Code of Ordinances that involve multifamily of more than three (3) units and commercial structures that are brought before it for consideration, it may impose the following fines:~~

~~(1) — For a first violation, a fine not to exceed one thousand dollars (\$1,000.00) per day per violation.~~

~~(2) — Five thousand dollars (\$5,000.00) per day per violation for a repeat violation;~~

~~(3) — Up to fifteen thousand dollars (\$15,000.00) per violation if the Code Enforcement Board finds the violation to be irreparable or irreversible in nature;~~

~~(4) — In addition to such fines, the Code Enforcement Board may impose additional fines to cover all costs incurred by the City of Palm Bay in enforcing its codes and all costs of repairs pursuant to Fla. Stat. § 162.09.~~

~~(B) — In determining the amount of fines to be imposed, the Code Enforcement Board shall consider, but not be limited to, the following criteria:~~

~~(1) — The gravity of the violation;~~

~~(2) — Any actions taken by the violator to correct the violation;~~

~~(3) — The corrective actions taken by the violator were made in good faith;~~

~~(4) — Any previous violations committed by the violator;~~

- ~~(5) — The length of time the violation existed;~~
- ~~(6) — The violation is irreparable in nature;~~
- ~~(7) — The violation is irreversible in nature;~~
- ~~(8) — The harm resulting from the violation is irreparable or irreversible;~~
- ~~(9) — Character of the surrounding neighborhood.~~

~~§ 52.090 SETTLEMENT OR COMPROMISE OF LIENS.~~

~~(A) — The Special Magistrate shall be authorized to review and approve requests for settlement, compromise or cancellation of liens imposed pursuant to this subchapter or Fla. Stat. Chapter 162. The Special Magistrate shall make the determination as to whether to settle a lien for less than face value or to cancel such lien altogether, upon submission of a Petition for Relief (form on file) by an affected property owner or prospective owner. Approval of settlement, compromise or cancellation shall be objectively based upon the following:~~

- ~~(1) — The market value of the real property as most recently determined by the Brevard County Property Appraiser;~~
- ~~(2) — The gravity of the violation;~~
- ~~(3) — The due diligence of the property owner upon receipt of the violation notice;~~
- ~~(4) — The actions taken and the amount of money spent on correcting the violation(s);~~
- ~~(5) — Any previous violations committed by the property owner or the property owner's tenant and/or occupant; and~~
- ~~(6) — Any other extenuating circumstances which justify the reduction or refusal to reduce the amount owed.~~

~~(B) — The City Council may, at its discretion by resolution, adopt a more formal policy regulating the criteria for settlement, compromise or cancellation of code enforcement liens. No reduction may be granted by the Special Magistrate for a lien when current litigation exists in which the primary litigants are the property owners and the city and in which the real property is at issue.~~

~~§ 52.091 PROCEDURE FOR SETTLEMENT OR COMPROMISE OF LIENS.~~

~~(A) — The owner or a prospective purchaser of real property against which a lien has been imposed pursuant to the action of the Code Enforcement Board~~

~~may file a Petition for Relief with the City Manager or his designee seeking satisfaction of such code enforcement lien with less than full payment thereof, including partial payment in conjunction with verified improvements to the exterior of the real property. No such application shall be forwarded to the Special Magistrate for consideration hereunder until the applicant has first shown that:~~

~~(1) — All ad valorem property taxes, special assessments, city utility charges and other government-imposed charges, fines or liens against the subject real property have been paid or are current;~~

~~(2) — All code violations have been corrected under required permits issued therefore and appropriate affidavits of compliance are on file in the matter.~~

~~(B) — In the event the property owner is seeking relief under this section to facilitate a refinancing of the real property or to secure a home equity loan, the property owner may apply for the relief notwithstanding subsection (A), paragraph (1) above, provided a binding agreement is executed whereby the unpaid taxes, assessments, other liens or other indebtedness will be fully satisfied at the closing of the refinancing or home equity loan.~~

~~(C) — Petition for Relief. In considering an application to reduce a lien imposed by the Code Enforcement Board, no settlement or satisfaction thereof shall be approved by the Special Magistrate with less than full payment thereof, unless the Special Magistrate hears the matter as a quasi-judicial hearing at a public meeting (not a public hearing). Subsequent to the hearing, the Special Magistrate shall make specific findings that no violation of any city ordinance currently exists on the subject real property, or that a prospective purchaser has agreed to correct such violations on or before a date certain, which agreement is evidenced by a written agreement.~~

~~(D) — Settlement of Litigation. In considering whether to authorize a reduction of a lien imposed by the Code Enforcement Board to bring a litigation matter to closure, no settlement or satisfaction thereof shall be approved by the Special Magistrate with less than full payment thereof, until the Special Magistrate receives a recommendation from both the City Attorney and the City Manager in writing, is fully apprised of the market value of the property, the amount of the lien(s), and any other extenuating circumstances. If time is of the essence, this determination does not require a public meeting at the time a decision is rendered; however, the settlement decision shall be ratified by the Special Magistrate at the next public meeting of the Special Magistrate and the full amount of the lien shall~~

~~be placed in escrow by the closing agent until such time as the Magistrate's order is ratified.~~

~~(E) — Urgent Settlements. In the event an applicant requests that a Petition for Relief be considered prior to the next regularly scheduled hearing date, good cause must be shown. Good cause may include, but is not limited to, an unexpected short closing date for the purchase of real property. The Special Magistrate has the sole discretion to determine whether the matter involves a legitimate urgency which requires resolution prior to the next scheduled hearing. Before making a determination under this subsection, the Special Magistrate shall receive a recommendation from both the City Attorney and the City Manager in writing, shall be fully apprised of the market value of the property, the amount of the lien(s), and any other extenuating circumstances. This determination does not require a public meeting at the time a decision is rendered; however, the settlement decision shall be ratified by the Special Magistrate at the next public meeting of the Special Magistrate and the full amount of the lien shall be placed in escrow by the closing agent until such time as the Magistrate's order is ratified.~~

~~§ 52.092 NUISANCES UNDER Fla. Stat. § 893.138.~~

~~The City Council, pursuant to Section 893.138(4), hereby designates the Code Enforcement Board, established on November 3, 1983, as the administrative board to hear complaints and abate those nuisances per Section 893.138(11), Florida Statutes, by imposing fines not to exceed two hundred fifty dollars (\$250.00) per day for public nuisances; requiring payment of reasonable costs, including reasonable attorney's fees, associated with the investigations of and hearings on public nuisances; imposing fines not to exceed five hundred dollars (\$500.00) per day for recurring public nuisances; providing for continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared to be a public nuisance; providing for the recording of orders on public nuisances; providing for recorded orders on public nuisances becoming liens against the real property that is the subject of the order; and providing for the foreclosure of property subject to the lien and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure."~~

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the City of Palm Bay Code of Ordinances be revised to delete the language as specified above.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect March 1, 2022.

Read in title only at Meeting 2022-XX, held on _____, 2022; and read in title only and duly enacted at Meeting 2022-XX, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Strikethrough words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Patricia Smith, City Attorney

DATE: 1/6/2022

RE: Ordinance 2022-11, amending the Code of Ordinances, Chapter 52, Boards, by creating a new subchapter to be titled 'Code Enforcement Special Magistrate', first reading.

Under Section 162.03(2) Florida Statutes, the City may adopt by ordinance a code enforcement system that gives special magistrates the authority to hold hearings and assess fines against violators of municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under the Local Government Code Enforcement Boards Act, §§ 162.01-.13, Florida Statutes. This ordinance provides for the appointment of one or more special magistrates to preside over code enforcement matters, sets qualification standards, specifically grants the special magistrate the powers of the code enforcement board and designates the special magistrate to hear public nuisance complaints. The ordinance sets the following qualifications of a special magistrate: 1. an attorney licensed to practice law in the State of Florida; 2. licensed for no less than five (5) years; and 3. an attorney that has not been disciplined by any state bar. Council appoints the attorney for a period of two (2) years that may be renewed by City Council. The rate of pay of the special magistrate will be established in the special magistrate's contract.

REQUESTING DEPARTMENT:

Growth Management, City Attorney's Office

FISCAL IMPACT:

The cost of the special magistrate will be determined based on the proposals submitted in the Request for Proposals and the contract for the special magistrate approved by City Council. As these funds were not previously budgeted, a budget amendment will be required.

RECOMMENDATION:

Motion to approve the Ordinance as noted above.

ATTACHMENTS:

Description

Ordinance 2022-11

ORDINANCE 2022-11

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE V, LEGISLATIVE, CHAPTER 52, BOARDS, BY CREATING A NEW SUBCHAPTER TO BE TITLED 'CODE ENFORCEMENT SPECIAL MAGISTRATE'; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 52, Boards, is hereby amended by creating a new subchapter to be titled 'Code Enforcement Special Magistrate', which shall read as follows:

"CODE ENFORCEMENT SPECIAL MAGISTRATE

Section 52.080 INTENT.

It is the intent of this subchapter to promote, protect, educate and improve the health, safety, and welfare of the citizens of the city, by adopting the Local Government Code Enforcement Boards Act, Section 162.01 through Section 162.13, Florida Statutes, and supplemental code enforcement procedures, as provided in Section 162.21 through Section 162.30, Florida Statutes.

Section 52.081 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates a different meaning:

Code compliance officer means those authorized agents or employees of the city whose duty it is to ensure compliance with the Code of Ordinances.

Irreparable or irreversible violation means a violation that causes harm, damage, injury or change that is incapable of correction, repair or return to an original condition.

Person means any individual, firm, partnership, corporation, association, executor, administrator, trustee, or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Reasonable time means the time that would be required by a prudent person acting diligently to correct the violation, taking into consideration the scope

of the work required, the necessity to obtain any required permit, license or other approval by a government agency, and delays that may reasonably be expected to be encountered such as, but not necessarily limited to, the weather; however, where a different time period in which to correct the violation is provided for by the ordinance being enforced, that time period shall constitute reasonable time for that particular violation.

Repeat violation means a violation of a provision of an ordinance by a person who has been previously found by a special magistrate or through any other quasi-judicial or judicial process, or who has admitted by virtue by paying a fine imposed through a citation, to have violated the same provision within five (5) years prior to the violation, notwithstanding the fact that the violations occurred at different locations.

Special magistrate means an officer appointed as provided in this subchapter who shall have the status and authority of a code enforcement board.

Violator shall mean the person responsible for the code violation, which, in the appropriate circumstances, shall either be the perpetrator of the violation or the owner of the real property upon which the violation occurred.

Section 52.083 JURISDICTION.

The special magistrate shall have jurisdiction to hear and decide cases in which any violation of any provision, section or portion of this Code of Ordinances is alleged.

Section 52.084. SPECIAL MAGISTRATE APPOINTMENT; QUALIFICATIONS.

(A) The City Council may appoint one or more special magistrates who shall have the authority to hold hearings, assess fines against violators of the City's codes and ordinances, reduce fines in whole or in part, and otherwise exercise the powers of a code enforcement board as provided in Chapter 162, Part I, Florida Statutes, and to the extent provided in this article.

(B) Special magistrates shall be an attorney licensed to practice law in the State of Florida for no less than five (5) years. No attorney who has been disciplined by the Florida Bar or a bar of any other jurisdiction shall be appointed as a special magistrate. Any other qualifications may be established by resolution of the City Council.

(C) Special magistrates shall be appointed to a term of two (2) years and may be reappointed by the City Council.

(D) The special magistrate shall be compensated at a rate as provided in contract.

(E) A special magistrate shall preside over code enforcement matters once a month or more often if necessary. All hearings shall be open to the public.

(F) Minutes and records of hearings before a special magistrate shall be kept and maintained by the city in the manner and to the extent required by law. The city shall provide necessary and reasonable clerical and administrative support to enable a special magistrate to perform his or her duties. A special magistrate shall not be authorized to hire or use the services of any person except those provided by the city to assist in the performance of his or her duties.

(G) A special magistrate shall be subject to removal for cause. Failure to attend a hearing for which notice has been given without cause and without the prior notice to the city, shall constitute cause for removal. The city and the special magistrate may agree by contract to allow the contract to be terminated for convenience with prior notice.

Section 52.085 POWERS OF SPECIAL MAGISTRATE.

(A) A special magistrate shall have the power to:

- (1) Adopt rules for the conduct of code enforcement hearings;
- (2) Subpoena alleged violators and witnesses to its hearings;
- (3) Subpoena evidence, records, surveys, plats and other material;
- (4) Take testimony under oath; and
- (5) Issue orders following a hearing, which shall have the force of law and which shall set forth the steps necessary to bring a violation into compliance with the code or ordinance that has been violated, including requirements for compliance by a specific date and daily fines if the violation continues beyond the compliance date.

(B) A special magistrate shall not have the power to consider requests for reconsideration or rehearing that would extend the respondent's time for seeking an appeal.

Section 52.086 CONFLICT OF INTEREST.

The following conflict of interest provisions shall apply to the special magistrate:

(A) A special magistrate shall not engage in ex parte communications with any party, representative of a party, or interceding person concerning an alleged violation.

(B) No person who is, or may become, a party to a hearing before a special magistrate shall engage in ex parte communications with any special magistrate concerning that violation. This restriction shall extend to any person appearing or interceding on behalf of a party, whether or not such person may have a direct personal or financial interest in the property subject of the alleged violation.

Section 52.087 PRESENTATION OF CASES.

(A) The code compliance officers have the primary duty of enforcing the various codes and initiating enforcement proceedings before the special magistrate. No special magistrate shall have the power to initiate such enforcement proceedings.

(B) A code compliance officer may not initiate enforcement proceedings for a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the city before an enforcement proceeding may occur. This paragraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

(C) Each case before the special magistrate shall be presented by the code compliance officer issuing the notice of violation, the code compliance supervisor, other person with knowledge of the violation or the attorney representing the city.

(D) All testimony shall be under oath and shall be recorded. The special magistrate shall take testimony from the code compliance officer and the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(E) The special magistrate has discretion to continue a code enforcement hearing at any time and may request additional information from either party.

(F) If a code enforcement hearing is continued, a date certain for the continued code enforcement hearing shall be announced at the public hearing or

a notice shall be provided to the respondent if a date is not available at the code enforcement hearing.

(G) Upon completion of all the evidence, the special magistrate shall close the code enforcement hearing.

(H) The special magistrate shall immediately deliberate in open session before the public. Although the public is welcome at the code enforcement hearings, they shall not be allowed to participate in or address the special magistrate during deliberation.

(I) After the conclusion of the hearing, the special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief. The order shall include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in Section 162.09(1), Florida Statutes, as may be amended from time to time, the cost of repairs may be included along with the fine if the order is not complied with by the specified date.

(J) If the city prevails in enforcing a case before the special magistrate, it shall be entitled to recover all costs incurred in enforcing the case before the Special Magistrate, and in any appeals from the special magistrate's order. Such costs include but shall not be limited to: investigative costs, administrative costs, prosecution costs, and preparation of the record on appeal.

(K) A certified copy of the order required in paragraph 9 may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

(L) In all proceedings and hearings before the special magistrate, the special magistrate shall not be empowered to consider or rule upon the validity of any city ordinance. The special magistrate shall presume the validity of all city ordinances, except where a court of competent jurisdiction has determined an ordinance to be invalid. Furthermore, the special magistrate shall not be empowered to determine if the special magistrate has jurisdiction with respect to any alleged violation of a city ordinance; if the alleged violation derives from any

city ordinance, the special magistrate has jurisdiction and may proceed with the special magistrate's enforcement duties pursuant to Chapter 162, Florida Statutes, and the Code of Ordinances.

SECTION 52.088 ADMINISTRATIVE FINES; COSTS OF REPAIR; LIENS.

(A) Upon being notified by the code compliance officer that a previous order of the special magistrate has not been complied with by the time specified in such order, or finding that a repeat violation has been committed, the special magistrate may impose a fine at the daily rate previously set by the special magistrate, or in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by a code compliance officer.

(B) If there is reason to believe that a violation or a condition causing the violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the special magistrate shall notify the City Council, which may authorize reasonable repairs or other corrective actions required to bring the property into compliance, or otherwise secure the property, and charge the violator with the reasonable costs of the repairs or other corrective actions along with the fines imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the City Council for damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the fine by the special magistrate.

SECTION 52.089 FINES IN EXCESS OF STATUTORY LIMITS.

(A) When the special magistrate determines that the factors and criteria in subsection (B) exist in any matters regarding violations of the Palm Bay Code of Ordinances that involve multifamily of more than three (3) units and commercial structures, the special magistrate may impose the following fines:

(1) For a first violation, a fine not exceed one thousand dollars (\$1,000.00) for each day that the violation continues past the date set for compliance.

(2) Five thousand dollars (\$5,000.00) per day per violation for repeat violations;

(3) A fine not to exceed fifteen thousand dollars (\$15,000.00) per violation, if the special magistrate finds a violation to be irreparable or irreversible in nature;

(4) In addition to such fines, the special magistrate may impose additional fines to include all costs of repairs or other corrective action taken by the City of Palm Bay in enforcing its codes and all cost of repairs pursuant to Section 162.09, Florida Statutes.

(B) In determining the amount of the fine to be imposed, the special magistrate shall consider the following factors:

- (1) The gravity of the violation;
- (2) Any actions taken by the violator to correct the violation;
- (3) If the corrective actions taken by the violator were made in good faith;
- (4) Any previous violations committed by the violator;
- (5) The length of time the violation existed;
- (6) Whether the harm resulting from the violation is irreparable or irreversible;
- (7) The character of the surrounding neighborhood.

(C) Liens created pursuant to an order by the special magistrate and recorded in the public record shall bear simple interest at a rate not to exceed the legal rate allowed for such liens and may be foreclosed pursuant to the procedure set forth in Chapter 162, Florida Statutes.

Section 52.090 OTHER REMEDIES.

(A) The provisions and procedures contained in this subchapter shall be in addition and supplemental to any other remedies now existing or subsequently provided for by law regarding violations of this Code and any other ordinance of the city.

(B) The City Council may, by resolution, establish uniform schedules to be imposed on code enforcement cases that appear before the special magistrate to cover all costs of enforcement.

Section 52.091. APPEALS.

Any aggrieved party, including the City, may appeal a ruling or order of the special magistrate to the circuit court as provided by Section 162.11, Florida

Statutes. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal must be filed within thirty (30) days of the execution of the order to be appealed.

Section 52.092 SETTLEMENT OR COMPROMISE OF LIENS.

(A) The Special Magistrate shall be authorized to review and approve requests for settlement, compromise or cancellation of liens imposed pursuant to this subchapter or Chapter 162, Florida Statutes. The Special Magistrate shall make the determination as to whether to settle a lien for less than face value or to cancel such lien altogether, upon submission of a Petition for Relief (form on file) by an affected property owner or prospective owner. Approval of settlement, compromise or cancellation shall be objectively based upon the following:

- (1) The market value of the real property as most recently determined by the Brevard County Property Appraiser;
- (2) The gravity of the violation;
- (3) The due diligence of the property owner upon receipt of the violation notice;
- (4) The actions taken and the amount of money spent on correcting the violation(s);
- (5) Any previous violations committed by the property owner or the property owner's tenant and/or occupant;
- (6) Whether the violation was committed by the current property owner; and
- (7) Any other extenuating circumstances which justify the reduction or refusal to reduce the amount owed.

(B) The City Council may, at its discretion by resolution, adopt a more formal policy regulating the criteria for settlement, compromise or cancellation of code enforcement liens. No reduction may be granted by the Special Magistrate for a lien when current litigation exists in which the primary litigants are the property owners and the city and in which the real property is at issue.

Section 52.093 PROCEDURE FOR SETTLEMENT OR COMPROMISE OF LIENS.

(A) The owner or a prospective purchaser of real property against which a code enforcement lien has been imposed may file a Petition for Relief with the City Manager or the City Manager's designee seeking satisfaction of such code enforcement lien with less than full payment, including partial payment in

conjunction with verified improvements to the exterior of the real property. No such application shall be forwarded to the Special Magistrate for consideration until the applicant has first shown that:

(1) All ad valorem property taxes, special assessments, city utility charges and other government-imposed charges, fines or liens against the subject real property have been paid or are current;

(2) All code violations have been corrected under required permits issued therefore and appropriate affidavits of compliance are on-file in the matter.

(B) In the event the property owner is seeking relief under this section to facilitate a refinancing of the real property or to secure a home equity loan, the property owner may apply for the relief notwithstanding subsection (A), paragraph (1) above, provided a binding agreement is executed whereby the unpaid taxes, assessments, other liens or other indebtedness will be fully satisfied at the closing of the refinancing or home equity loan.

(C) Petition for Relief. In considering an application to reduce a code enforcement lien, no settlement or satisfaction shall be approved by the Special Magistrate with less than full payment, unless the Special Magistrate hears the matter as a quasi-judicial hearing at a public meeting (not a public hearing). Subsequent to the hearing, the Special Magistrate shall make specific findings that no violation of any city ordinance currently exists on the subject real property, or that a prospective purchaser has agreed to correct such violations on or before a date certain, which agreement is evidenced by a written agreement.

(D) Settlement of Litigation. In considering whether to authorize a reduction of a code enforcement lien to bring a litigation matter to closure, no settlement or satisfaction shall be approved by the Special Magistrate with less than full payment, until the Special Magistrate receives a recommendation from both the City Attorney and the City Manager in writing, is fully apprised of the market value of the property, the amount of the lien(s), and any other extenuating circumstances. If time is of the essence, this determination does not require a public meeting at the time a decision is rendered; however, the settlement decision shall be ratified by the Special Magistrate at the next public meeting of the Special Magistrate and the full amount of the lien shall be placed in escrow by the closing agent until such time as the Magistrate's order is ratified.

(E) Urgent Settlements. In the event an applicant requests that a Petition for Relief be considered prior to the next regularly scheduled hearing date, good cause must be shown. Good cause may include, but is not limited to, an

unexpected short closing date for the purchase of real property. The Special Magistrate has the sole discretion to determine whether the matter involves a legitimate urgency which requires resolution prior to the next scheduled hearing. Before making a determination under this subsection, the Special Magistrate shall receive a recommendation from both the City Attorney and the City Manager in writing, shall be fully apprised of the market value of the property, the amount of the lien(s), and any other extenuating circumstances. This determination does not require a public meeting at the time a decision is rendered; however, the settlement decision shall be ratified by the Special Magistrate at the next public meeting of the Special Magistrate and the full amount of the lien shall be placed in escrow by the closing agent until such time as the Magistrate's order is ratified.

Section 52.094 NUISANCES UNDER Fla. Stat. § 893.138.

Pursuant to Chapter 166 and Section 893.138, Florida Statutes, the City Council hereby creates the public nuisance abatement process and designates a special magistrate to hear public nuisance complaints. It is the intent of this section to establish a public nuisance abatement process to promote, protect, and improve the health, safety and welfare of the citizens of the city by providing an equitable, expeditious and effective method to abate public nuisances. The special magistrate shall have authority to hold hearings and assess fines against property owners and issue orders having the force of law in accordance with the terms and conditions herein set and under the authority of Chapter 166 and Section 893.138, Florida Statutes. The special magistrate may impose fines not to exceed two hundred fifty dollars (\$250.00) per day for public nuisances; requiring payment of reasonable costs, including reasonable attorney's fees, associated with the investigations of and hearings on public nuisances; imposing fines not to exceed five hundred dollars (\$500.00) per day for recurring public nuisances; providing for continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared to be a public nuisance; providing for the recording of orders on public nuisances; providing for recorded orders on public nuisances becoming liens against the real property that is the subject of the order; and providing for the foreclosure of property subject to the lien and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure. The jurisdiction of the public nuisance abatement special magistrate shall not be exclusive."

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect March 1, 2022.

Read in title only at Meeting 2022-XX, held on _____, 2022; and read in title only and duly enacted at Meeting 2022-XX, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/6/2022

RE: Ordinance 2022-12, amending the Code of Ordinances, Chapter 55, Police and Firefighters Retirement Pension Plan, by modifying the minimum distribution of benefits and miscellaneous provisions, first reading.

Effective January 1, 2020, the Internal Revenue Code was amended by increasing the required minimum distribution age from 70½ to 72, thereby creating the need to revise our City Code to reflect the amendment. The proposed changes to City Ordinances 55-17 and 55-18 include language reflecting the change in distribution age.

Additionally, language is added to provide consideration for an administrative process policy to be adopted by the Pension Board that would allow for administrative changes such as this one to be handled at the Board level, specifically when such changes are required in order to maintain compliance with the Internal Revenue Code.

Also attached to this agenda memo is a letter received from the Pension Fund actuary that includes their determination that the adoption of these proposed Ordinance changes will have no impact on the assumptions used in determining the valuation results/funding requirements of the program.

REQUESTING DEPARTMENT:

City Manager's Office

FISCAL IMPACT:

None.

RECOMMENDATION:

Motion to approve and authorize the Mayor to execute the Amended Ordinance attached.

ATTACHMENTS:

Description

Letter of No Impact

Ordinance 2022-12

December 17, 2021

VIA EMAIL

Ms. Kathy Adams, CPPT
Board Administrator
City of Palm Bay Police & Fire Pension Fund
Conlan Professional Center
1501 Robert J. Conlan Blvd. NE Suite 260
Palm Bay, FL 32905-3567

Re: City of Palm Bay
Police Officers' and Firefighters' Retirement Pension Plan

Dear Ms. Adams:

In response to your request, we have reviewed the proposed ordinance amending Section 55.17, Minimum Distribution of Benefits and Section 55.18, Miscellaneous Provisions to update the required minimum distribution age from 70 ½ to 72 and to adopt an administrative policy setting forth the required provisions for tax qualification. We have determined that adoption of the proposed ordinance will have no impact on the assumptions used in determining the funding requirements of the program.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter to the following office:

Mr. Keith Brinkman
Bureau of Local Retirement Systems
Division of Retirement
P. O. Box 9000
Tallahassee, FL 32315-9000

Mr. Steve Bardin
Municipal Police and Fire
Pension Trust Funds
Division of Retirement
P.O. Box 3010
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,



Patrick T. Donlan, ASA, EA, MAAA

ORDINANCE 2022-12

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE V, LEGISLATIVE, CHAPTER 55, POLICE AND FIREFIGHTERS RETIREMENT PENSION PLAN, BY MODIFYING THE MINIMUM DISTRIBUTION OF BENEFITS AND MISCELLANEOUS PROVISIONS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay Police Officers' and Firefighters' Retirement System ("Pension Plan") is governed by Chapters 175 and 185, Florida Statutes, and

WHEREAS, the City of Palm Bay has a Police Officers' and Firefighters' Retirement System for the benefit of City police officers and firefighters, and

WHEREAS, changes to the Internal Revenue Code happen quickly and frequently. There is a benefit in authorizing the Board of Trustee of the City of Palm Bay Police Officers' and Firefighters' Pension Trust Fund to make appropriate changes to the Plan in order to maintain the Plan's tax qualified status, and

WHEREAS, effective January 1, 2020, the Internal Revenue Code was amended by increasing the required minimum distribution age from 70½ to 72, and

WHEREAS, the City Code should be amended to reflect this Internal Revenue Code amendment, and

WHEREAS, the Palm Bay City Council has determined that the passage of this ordinance is in the best interest of the citizens of the City of Palm Bay.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 55, Police and Firefighters Retirement Pension Plan, Section 55.17, Minimum Distribution of Benefits, is hereby amended and shall henceforth read as follows:

“Section 55.17. MINIMUM DISTRIBUTION OF BENEFITS.

* * *

(B) *Time and manner of distribution.*

(1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age ~~seventy and one-half (70 ½)~~ >>seventy-two (72), provided the member had not attained age seventy and one half (70 ½) by December 31, 2019;<< or the calendar year in which the member retires unless otherwise provided for in the Plan or required by law.

(2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:

(a) If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age ~~seventy and one-half (70 ½)~~ >>seventy-two (72), provided the member had not attained age seventy and one half (70 ½) by December 31, 2019<<, if later, >>as the surviving spouse elects<<.

* * *

(D) *Requirements for annuity distributions that commence during a member's lifetime.*

* * *

(2) *Period certain annuities.* Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age ~~seventy (70)~~ >>seventy-two (72), provided the participant had not attained age seventy and one half (70 ½) by December 31, 2019<<, the applicable distribution period for the member is the distribution period for age ~~seventy (70)~~ >>seventy-

two (72)<< under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of ~~seventy (70)~~ >>seventy-two (72)<< over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this subsection (D)(2), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

* * *

SECTION 2. The City of Palm Bay Code of Ordinances, Title V, Legislative, Chapter 55, Police and Firefighters Retirement Pension Plan, Section 55.18, Miscellaneous, is hereby amended and shall henceforth read as follows:

“Section 55-18. MISCELLANEOUS PROVISIONS

* * *

(C) *Qualification of system.* It is intended that the system will constitute a qualified pension plan under the applicable provisions of the code, as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted and the regulations issued thereunder. Subject to the foregoing, the system is declared to be an irrevocable plan and trust, subject to the city's right to terminate in accordance with law.

>>(1) In recognition of the changing requirements of system qualification, the Board shall adopt an administrative policy setting forth the required provisions for tax qualification. Such a policy shall be amended by the Board as required to maintain continuing compliance with the Internal Revenue Code and that policy and any amendments shall have the force of law as if adopted by the City Council.<<

* * *

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 4. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of ordinances and the sections may be renumbered to accomplish such intention.

SECTION 5. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 6. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022-XX, held on _____, 2022; and read in title only and duly enacted at Meeting 2022-XX, held on _____, 2022.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

***Strikethrough* words shall be deleted; highlighted words that will be included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.**



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Larry Wojciechowski, Finance Director

DATE: 1/6/2022

RE: Ordinance 2022-13, amending the Fiscal Year 2021-2022 budget by appropriating and allocating certain monies (first budget amendment), first reading.

Summary of the proposed budget amendment:

General Fund (001)

Revenues – Total \$856,502

- Recognize additional FY 2022 State-Shared revenues published by the Florida Department of Revenue's Office of Tax Research – **\$850,881**.
- Recognize Hurricane Dorian FEMA Public Assistance (PA) Reimbursement #2, General Fund portion – **\$37,658**.
- Recognize additional funding from the Hazard Mitigation Grant Program through the Florida Department of Emergency Management (FDEM) to offset the salaries of the Primary Project Manager (Greg Minor, Facilities Director) and a Secondary Project Manager (Andrew Orndorff, Construction Project Manager) – **\$14,500**.
- Budget Correction: Reduce incoming transfer from the Bayfront Community Redevelopment Fund (181) for FY 2020 unspent funds owed to the General Fund per Interlocal Agreement; transfer was completed in FY 2021 Budget Amendment #5 per City Council approval on 08/05/2021 – **(\$46,537)**.

Expenditures – Total \$389,028

- Appropriate funding for the Special Election for Seat 5 on the Palm Bay City Council to be held on Tuesday, 03/08/2022; approved by City Council 08/05/2021 – **\$254,000**.
- Procurement Agent II to Procurement Agent III promotion salary increase, approved by City Council 10/21/2021 – **\$3,316**.
- Appropriate budgeted funding from the Human Resources Department and vending machine revenue (through Undesignated Fund Balance) to city-wide General Fund departments to utilize towards 2021 departmental holiday events based on active FTE count – **Net Impact \$1,807**.
- Appropriate funding for a temporary Office Assistant II position within the Public Works Department to assist with applications processing and public customer service duties specifically for Driveway and Lot Drainage; approved by City Council 11/04/2021 – **\$15,427**.
- Appropriate funding for credit card processing fees related to the CardKnox credit card merchant transition scheduled for March 2022; funding to cover estimated costs from October 2021 through March 2022; approved by Council 12/02/2021 – **\$70,000**.

- Transfer budgeted funding to the Utilities Operating Fund from the Human Resources Department and vending machine revenue (through Undesignated Fund Balance) to utilize towards 2021 departmental holiday events based on active FTE count – **\$1,033.**
- Transfer funding to the Building Fund from the Human Resources Department and vending machine revenue (through Undesignated Fund Balance) to utilize towards 2021 departmental holiday events based on active FTE count – **\$245.**
- Transfer 25.0% city-match funding to the Community Investment Fund for the Florida Inland Navigation District (FIND) grant for the replacement of existing and permitted navigable channel markers along Turkey Creek; approved by City Council 03/18/2021 – **\$25,000.**
- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022; Public Works two (2) AED Defibrillators \$4,000; one (1) Small Conex Box \$4,500; and two (2) Large Conex Boxes \$9,700; delay in delivery/installation due to vendor insurance inquiries – **Total Balance \$18,200**

Enforcement Trust Fund/LET Fund (101)

Expenditures – Total \$25,031

- LETF 22-01: Legal Costs associated with the Asset Forfeiture Program to cover court fees, summons fees, legal advertisements, certified mailings etc.; approved by City Council 10/07/2021 – **\$5,000.**
- LETF 22-02: Training registration costs and travel related expenditures for Dana Packard (Community Services Coordinator) to attend the Senior Management Institute for Police (SMIP) and Agent Jorge Negrón to attend Technical Installations in a High Voltage Environment training; approved by City Council 11/04/2021 – **\$13,453.**
- LETF 22-03: Donation to the 2021 Reindeer Run for the purchase of gift cards \$6,450 and reindeer antlers for the children \$128; approved by City Council 12/02/2021 - **\$6,578.**

Code Nuisance Fund (105)

Expenditures – Total \$17,000

- Budget Correction: Appropriate funding for County Recording fees (County Clerk of Courts) missed during the budget preparation process – **\$17,000.**

SHIP Fund (111)

Expenditures – Total \$0

- Budget Correction: Transfer reserves from the 33/Growth Management Department account code (\$4,500) to the 34/Community & Economic Development (C&ED) Department account code \$4,500; SHIP Fund falls under the Housing Division reporting to C&ED – **\$0.**

Bayfront Community Redevelopment Fund (181)

Expenditures – Total (\$46,537)

- Budget Correction: Reduce outgoing transfer to the General Fund (001) for FY 2020 unspent funds owed to the General Fund per Interlocal Agreement; transfer was completed in FY 2021 Budget Amendment #5 per City Council approval on 08/05/2021 – **(\$46,537).**

Police Impact Fees - 32907 Fund (183)

Expenditures – Total \$15,980

- Conversion of a Market Patrol Vehicle to a Market K9 Patrol Vehicle; approved by City Council 09/16/2021 – **\$6,175.**
- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: vehicle & on-boarding expenditures for six (6) Police Officer position awarded through the Department of Justice (DOJ) Cops Hiring Program (CHP) Federal Grant; approved by Council 11/19/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$9,805.**

Police Impact Fees - 32908 Fund (184)

Expenditures – Total \$9,924

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: vehicle & on-boarding expenditures for six (6) Police Officer position awarded through the Department of Justice (DOJ) Cops Hiring Program (CHP) Federal Grant; approved by Council 11/19/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$9,924.**

Police Impact Fees - 32909 Fund (186)

Expenditures – Total \$40,962

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: vehicle & on-boarding expenditures for six (6) Police Officer position awarded through the Department of Justice (DOJ) Cops Hiring Program (CHP) Federal Grant; approved by Council 11/19/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$40,962.**

Fire Impact Fees - 32905 Fund (187)

Expenditures – Total \$18,078

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: High Water Rescue Vehicle; approved by Council 09/17/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$1,828.**
- Appropriate funding to complete retrofitting the high-water rescue vehicle; approved by City Council 11/04/2021 – **\$16,250.**

Fire Impact Fees - 32907 Fund (188)

Expenditures – Total \$18,078

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: High Water Rescue Vehicle; approved by City Council 09/17/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$1,828.**
- Appropriate funding to complete retrofitting the high-water rescue vehicle; approved by City Council 11/04/2021 – **\$16,250.**

Fire Impact Fees - 32908 Fund (189)

Expenditures – Total \$180,000

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: Brush Truck for Fire Station #6; approved by City Council 06/03/2021, on FY 2021 Budget Amendment #3 – **Full Amount \$180,000.**

Fire Impact Fees - 32909 Fund (190)

Expenditures – Total \$73,517

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022: Additional funding for project 21FD01/Fire Training Facility; approved by City Council 09/02/2021, on FY 2021 Budget Amendment #5 – **Full Amount \$73,517.**

Transportation Impact Fees - 32907 Fund (197)

Expenditures – Total \$3,000,000

- Open and fund project 22PW01/Malabar Road Widening from Minton to SJHP; approved by Council 11/18/2021– **\$3,000,000.**

Community Investment Fund (301)

Revenues – Total \$188,000

- Record incoming Florida Inland Navigation District (FIND) grant for the replacement of existing and permitted navigable channel markers along Turkey Creek; approved by City Council 03/18/2021 – **\$75,000.**
- Transfer from the General Fund the 25.0% city-match funding for the Florida Inland Navigation District (FIND) grant for the replacement of existing and permitted navigable channel markers along Turkey Creek; approved by City Council 03/18/2021 – **\$25,000.**
- Transfer from the Stormwater Utilities Fund (461) for two (2) Nutrient-separating Baffle Boxes; approved by City Council 10/07/2021 – **\$88,000.**

Expenditures – Total (\$105,617)

- Utilize Florida Inland Navigation District (FIND) grant funding and city-match to replace 22 existing and permitted boater navigational signs; approved by City Council 03/18/2021 – **\$100,000.**
- Appropriate incoming revenue to project 21PW05/Two Nutrient Sep. Baffle Boxes - **\$88,000.**
- Close the Safe Routes to School project (18PW02); project completed – **(\$293,617).**

Road Maintenance CIP Fund (307)

Expenditures – Total (\$9,835)

- Close the Safe Routes to School project (18PW02); project completed – **(\$9,835).**

2019 G.O. Road Program Fund (309)

Expenditures – Total \$12,260,000

- Open and fund the following G.O. Road Program projects – **Total Impact \$12,260,000**
 - 22GO01/Driskell Heights Paving \$450,000
 - 22GO02/Florida Ave. Paving \$300,000
 - 22GO03/Farview Subdivision Paving \$300,000
 - 22GO04/Emerson-Fairhaven to C1 Paving \$550,000
 - 22GO05/PMU 20 Road Paving \$2,750,000
 - 22GO06/NE Area Misc. Road Paving \$3,785,000
 - 22GO07/CC 1-10 Road Paving \$4,125,000

Utilities Operating Fund (421)

Revenues – Total (\$130,631)

- Hurricane Dorian FEMA Public Assistance (PA) Reimbursement #2, Utilities Operating Fund portion – **\$111.**
- Transfer from the General Fund - Human Resources Department and vending machine revenue to utilize towards 2021 departmental holiday events based on active FTE count – **\$1,033.**
- Budget Correction: Reverse incoming transfer from the Stormwater Utility Fund (461) for the FY 2022 allocations for Utilities Customer Care Services salaries/wages; payroll allocations to be completed via salary distributions – **(\$131,775).**

Expenditures – Total \$328,424

- Appropriate incoming revenue to utilize towards 2021 departmental holiday events **\$1,033.**
- Appropriate funding to project 21WS25/Lift Station Solar Panels for additional solar/battery backup conversions; approved by City Council 10/07/2021 – **\$6,000.**
- Appropriate funding for Florida Department of Environmental Protection (FDEP) penalties and fees; approved by City Council 10/07/2021 – **\$25,000.**
- Budget Correction: Add personnel service costs for the Waster Distribution Division (8020) for Insurance Benefits Credits \$10,343 and Employee Health Insurance Premiums \$269,848 removed in error during the budget preparation process - **\$280,191.**
- Appropriate funding for fuel to fill the 6,000-gallon fuel tank at the North Regional Water Treatment Plant rehabilitation; approved by City Council 12/02/2021 – **\$16,200.**

Utilities Renewal & Replacement Fund (424)

Expenditures – Total \$29,103

- Appropriate additional funding for Change Order #3 for transfer/backwash pumps and generators (project 17WS04) for the North Regional Water Treatment Plant Rehabilitation, approved by City Council 10/21/2021 – **\$29,103.**

Building Fund (451)

Revenues – Total \$245

- Transfer from the General Fund - Human Resources Department and vending machine revenue to utilize towards 2021 departmental holiday events based on active FTE count – **\$245.**

Expenditures – Total \$63,970

- Purchase of one (1) Ford Escape Hybrid vehicle, approved by City Council 10/21/2021 – **\$28,960.**
- Appropriate incoming revenue to utilize towards 2021 departmental holiday events **\$245.**
- Appropriate funding for credit card processing fees related to the CardKnox credit card merchant transition scheduled for March 2022; funding to cover estimated costs from October 2021 through March 2022; approved by Council 12/02/2021 – **\$34,000.**
- Budget Correction: Appropriate funding for PFM Investment Services for 3-months missed during the budget preparation process – **\$765.**

Stormwater Utility Fund (461)

Expenditures – Total \$156,730

- Transfer to the Community Investment Fund (301) for two (2) Nutrient-separating Baffle Boxes; approved by City Council 10/07/2021 – **\$88,000.**
- Budget Correction: Reverse outgoing transfer to the Utility Operating Fund (421) for the FY 2022 allocations for Utilities Customer Care Services salaries/wages; payroll allocations to be completed via salary distributions – **(\$131,775).**
- Budget Correction: Appropriate funding for PFM Investment Services for 3-months missed during the budget preparation process – **\$505.**
- Appropriate additional funding to the Country Clubs Units drainage project (21SU12); the City Engineer's construction estimate came in higher than budgeted; approved by City Council 12/02/2021 - **\$200,000.**

Health Insurance Fund (511)

Expenditures – Total \$500

- Budget Correction: Appropriate funding for PFM Investment Services for 3-months missed during the budget preparation process – **\$500.**

Risk Management Fund (512)

Expenditures – Total \$22,237

- Assistant City Attorney to Deputy City Attorney promotion salary increase, approved by City Council 09/16/2021 – **\$21,737.**
- Budget Correction: Appropriate funding for PFM Investment Services for 3-months missed during the budget preparation process – **\$500.**

Fleet Services Fund (521)

Expenditures – Total \$136,328

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022; approved by City Council 09/03/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$51,366**

Fire Squad Truck – Balance \$3,582

Fire District Chief Vehicle – Balance \$12,784

Fire Brush Truck Retrofit for Wildland Fires – Full Amount \$35,000

- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022; Public Works Operations Division Manager Vehicle; approved by City Council 01/07/2021, on FY 2021 Budget Amendment #2 – **Total Balance \$27,250.**
- FY 2021 Budget re-appropriation of previously approved unspent/unencumbered funds not rolled to FY 2022; approved by City Council 09/03/2020, on FY 2021 Budget Amendment #1 – **Total Balance \$57,770.**
 - Accessories for two (2) marked K-9 Dodge Durangos – Balance \$26,800
 - Accessories for three (3) unmarked Dodge Durangos – Balance \$12,750
 - Accessories for two (2) unmarked Dodge Chargers – Balance \$8,540
 - Accessories for two (2) unmarked Nissan Rogues – Balance \$4,600 (purchased in lieu of approved Chevy Equinox)
 - Accessories for two (2) unmarked Nissan Altimas – Balance \$4,560
 - Tags/Titles/Permits for two (2) marked K-9 Dodge Durangos & two (2) unmarked Nissan Altimas – Balance \$520
- Close the completed Gasboy Upgrade project (21PW03) – **(\$58).**

REQUESTING DEPARTMENT:

Finance

FISCAL IMPACT:

Please refer to Exhibit A for details.

RECOMMENDATION:

Motion to adopt, by Ordinance, the FY 2022 First Budget Amendment.

ATTACHMENTS:

Description

Ordinance 2022-13

Exhibit A - FY 22 BA #1 Appropriations

ORDINANCE 2022-13

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2022 BUDGET BY APPROPRIATING and allocating funds IDENTIFIED IN exhibit 'a', CONSISTING OF five (5) PAGES AND INCORPORATED IN ITS ENTIRETY HEREIN; RECOGNIZING THAT SUCH APPROPRIATIONS MUST BE MADE PURSUANT TO THE CODE OF ORDINANCES OF THE CITY OF PALM BAY, CHAPTER 35; ADOPTING, RATIFYING, CONFIRMING, AND VALIDATING THE ALLOCATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Bay recognizes that non-budgeted items must be appropriated and that such appropriation must be allocated by Ordinance, and

WHEREAS, transfers between funds and departments must be approved by City Council, and

WHEREAS, Chapter 35, Finance, Budget, Section 35.035, of the City of Palm Bay, Code of Ordinances provides for the transfer of funds and appropriation of unbudgeted funds.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City Council, in accordance with the City of Palm Bay, Code of Ordinances, Chapter 35, Finance, Budget, Section 35.035, hereby appropriates the funds as identified in Exhibit 'A'.

SECTION 2. The City Council adopts, ratifies, and approves the appropriations as identified in Exhibit 'A'.

SECTION 3. The provisions within this Ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022- , held on , 2022; and
read in title only and duly enacted at Meeting 2022- , held on , 2022.

Robert Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK

Reviewed by CAO: _____

Summary of the Proposed Budget Amendment

	Revenues	Expenditures
General Fund (001)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations (PW)		18,200
Budget Correction: Incoming CRA Transfer Reduction	(46,537)	
Salary Adjustment: Procurement Agent II to III Promotion		3,316
Credit Card Processing Fees		70,000
FEMA PA Reimbursement - Hurricane Dorian	37,658	
Holiday Party Fund Re-Distribution & Vending Machine Revenue		1,807
Special Election Expenses		254,000
Hazard Mitigation Grant (FDEM) - Additional Funding	14,500	
Public Works Temporary Employment Services		15,427
Transfer to Community Investment Fund for 25% Match to the FIND Grant - Replace 22 Boater Navigational Signs		25,000
Record Additional EDR State-Shared Revenues	850,881	
Contingency		468,752
Undesignated Fund Balance	0	
Fund Subtotal	856,502	856,502
Law Enforcement Trust Fund (101)		
LETf 22-01: Asset Forfeiture Program		5,000
LETf 22-02: Training & Travel		13,453
LETf 22-02: 2021 Reindeer Run Donation		6,578
Reserves		(9,500)
Undesignated Fund Balance	15,531	
Fund Subtotal	15,531	15,531
Code Nuisance Fund (105)		
Budget Correction: Clerk of Court Recording Fees		17,000
Reserves		(17,000)
Fund Subtotal	0	0
SHIP Fund (111)		
Budget Correction: Department Code Correction		(4,500)
Reserves		4,500

Mayor and Council: FY 2022 First Budget Amendment

Janaury 6, 2022

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Exhibit A

Fund Subtotal	0	0
BCRA Fund (181)		
Budget Correction: Outgoing GF Transfer Reduction		(46,537)
Reserves		46,537
Fund Subtotal	0	0
Police Impact Fees-32905 Fund (183)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		9,805
K-9 Marked Vehicle Conversion		6,175
Reserves		(15,980)
Fund Subtotal	0	0
Police Impact Fees-32908 Fund (184)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		9,924
Reserves		(9,924)
Fund Subtotal	0	0
Police Impact Fees-32909 Fund (186)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		40,962
Reserves		(40,962)
Fund Subtotal	0	0
Fire Impact Fees-32905 Fund (187)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		1,828
High Water Rescue Vehicle Retrofit		16,250
Reserves		(18,078)
Fund Subtotal	0	0
Fire Impact Fees-32907 Fund (188)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		1,828
High Water Rescue Vehicle Retrofit		16,250
Reserves		(18,078)
Fund Subtotal	0	0
Fire Impact Fees-32908 Fund (189)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		180,000
Reserves		(180,000)

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Exhibit A

Fund Subtotal	0	0
Fire Impact Fees-32909 Fund (190)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations		73,517
Reserves		(73,517)
Fund Subtotal	0	0
Transportation Impact Fees-32907 Fund (197)		
Open Malabar Road Widening Project (22PW01)		3,000,000
Reserves		(1,002,548)
Undesignated Fund Balance	1,997,452	
Fund Subtotal	1,997,452	1,997,452
Community Investment Fund (301)		
Transfer from Stormwater Fund for Two (2) Nutrient Baffle Boxes		88,000
Funding for Two (2) Nutrient Baffle Boxes (project 21PW05)	88,000	
Transfer from General Fund for FIND Grant 25% Match - Replace 22 Boater Navigational Signs	25,000	
FIND Grant - Replace 22 Boater Navigational Signs	75,000	
Replace 22 Boater Navigational Signs (project 22PW02)		100,000
Close Safe Routes to Schools project (18PW02)		(293,617)
Reserves		293,617
Fund Subtotal	188,000	188,000
Road Maintenance CIP Fund (307)		
Close Safe Routes to Schools project (18PW02)		(9,835)
Reserves		9,835
Fund Subtotal	0	0
GO Road Program (309)		
Open Driskell Heights Paving Project (22GO01)		450,000
Florida Avenue Paving Project (22GO02)		300,000
Farview Subdivision Paving Project (22GO03)		300,000
Emerson-Fairhaven to C1 Paving Project (22GO04)		550,000
PMU 20 Road Paving Project (22GO05)		2,750,000
NE Area Misc. Road Paving Project (22GO06)		3,785,000
CC 1-10 Road Paving Project (22GO07)		4,125,000
Reserves		(99,774)

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Exhibit A

Undesignated Fund Balance	12,160,226	
Fund Subtotal	12,160,226	12,160,226
Utilities Operating Fund (421)		
Budget Correction: Transfer from Stormwater Fund	(131,775)	
Budget Correction: Insurance Benefits Credit & Health Insurance Premiums		280,191
Salary Adjustment: Utilities Director		7,151
FEMA PA Reimbursement - Hurricane Dorian	111	
Transfer from General Fund for Holiday Party Fund Re-Distribution	1,033	
Holiday Party Fund Re-Distribution & Vending Machine Revenue		1,033
Lift Station Solar Panels Project (21WS25)		6,000
Funding for FDEP Penalties & Fees		25,000
Fuel for 6000-gallon Tank for NRWTP Rehabilitation		16,200
Undesignated Fund Balance	466,206	
Fund Subtotal	335,575	335,575
Utilities Renewal & Replacement Fund (424)		
Additional Funding C/O #3 Transfer/Backwash Pumps & Generators (17WS04) for NRWTP Rehabilitation		29,103
Undesignated Fund Balance	29,103	
Fund Subtotal	29,103	29,103
Building Fund (451)		
Budget Correction: PFM Investment Services @ 3-Months		765
Electric Vehicle Purchase		28,960
Credit Card Processing Fees		70,000
Transfer from General Fund for Holiday Party Fund Re-Distribution	245	
Holiday Party Fund Re-Distribution & Vending Machine Revenue		245
Undesignated Fund Balance	99,725	
Fund Subtotal	99,970	99,970
Stormwater Utility Fund (461)		
Budget Correction: Reverse Cust. Svc. Personnel Transfer		(131,775)
Budget Correction: PFM Investment Services @ 3-Months		505

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Exhibit A

Transfer to Community Investment Fund for Two (2) Nutrient Baffle Boxes		88,000
Additional Funding Country Clubs Units project (21SU12)		200,000
Reserves		43,270
	200,000	
Fund Subtotal	200,000	200,000
Health Insurance Fund (511)		
Budget Correction: PFM Investment Services @ 3-Months		500
Reserves		(500)
Fund Subtotal	0	0
Risk Management Fund (512)		
Budget Correction: PFM Investment Services @ 3-Months		500
Salary Adjustment: Assistant City Attorney Promotion to Deputy City Attorney		21,737
Reserves		(22,237)
Fund Subtotal	0	0
Fleet Services Fund (521)		
FY 21 Unspent/Unencumbered Budget Re-Appropriations (Fire)		51,366
FY 21 Unspent/Unencumbered Budget Re-Appropriations (PW)		27,250
FY 21 Unspent/Unencumbered Budget Re-Appropriations (Police)		57,770
Close Gasboy Upgrade project (21PW03)		(58)
Reserves		(97,662)
Undesignated Fund Balance	38,666	
Fund Subtotal	38,666	38,666
Total	15,921,025	15,921,025



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/6/2022

RE: Consideration of an interlocal agreement with Brevard County for regional opioid settlement funds.

Two governmental entities in Brevard County deemed the opioid crisis significant enough to secure litigation counsel and individually elect to file suit against the defendants to wit: The City of Palm Bay and the County. The lawsuits filed by Palm Bay and the County were consolidated with other lawsuits filed by state, tribal and local governmental entities into what is known as the National Prescription Opiate Litigation in the United States District Court of the Northern District of Ohio, Eastern Division, case number 1:17-MD-2804. As a result of this litigation, multiple defendants have begun to negotiate settlements. The Attorney General for the State of Florida (hereinafter "Attorney General") anticipates that Settlement funds will be distributed to the State of Florida over multiple years as part of a global settlement, and not directly to the City of Palm Bay and County, despite their position as party plaintiffs.

The Attorney General proposed entering into agreements with local governments within the State of Florida to receive Settlement funds. This agreement (hereinafter referred to as the "State MOU"), is currently drafted and divides settlement funds into three portions designated as City/County (hereinafter individual settlement funds), Regional and State funds. The State MOU requires that in order for Brevard County to become a Qualified County eligible to receive Regional Funding, there must be an interlocal agreement among Brevard County and Municipalities, as defined in the MOU, with combined population exceeding 50% of the total population of the Municipalities within Brevard County, with the term "Municipalities" being defined for the purpose in this Agreement as those municipalities with a population of 10,000 or more as required by the State MOU; or with population less than 10,000 who were party plaintiffs; population for purposes of the MOU is determined by specific Census data.

Therefore, to ensure Brevard County is a qualified county to receive funding we are requesting approval to enter into the Interlocal Agreement attached.

Additionally, the County, at their December 7, 2021 Board meeting, approved a resolution that made changes to the Together In Partnership (TIP) Committee (as referenced in Section 6.D of the attached Interlocal Agreement) by specifically adding three additional standing members, including one from the City of Palm Bay, one from the City of Melbourne, and one appointed by the Space Coast League of Cities. It is important that Palm Bay have representation in this process, as TIP will be charged with annually prioritizing opioid misuse abatement activities to be included in Request for Proposals, as well as recommending activities and agencies for funding to the Board of County Commissioners.

REQUESTING DEPARTMENT:

City Manager's Office, City Attorney's Office

RECOMMENDATION:

Motion to approve and authorize the Mayor to execute the Interlocal Agreement on behalf of the City of Palm Bay.

ATTACHMENTS:

Description

Interlocal Agreement- Brevard County

INTERLOCAL AGREEMENT

BREVARD COUNTY REGIONAL OPIOID SETTLEMENT FUNDS

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 20____, by and between the following Parties: Brevard County, a political subdivision of the State of Florida, hereinafter referred to as the "County," and the eligible municipalities who have signed onto this agreement, as evidenced by their signature to this Agreement (hereinafter referred to as the "Signed Cities").

RECITALS

WHEREAS, a local, state and national crisis arose as a result of the manufacture, distribution and over-prescribing of opioid analgesics ("opioids") and resulted in opioid overdoses and addictions throughout municipalities, counties, states and the nation; and

WHEREAS, Brevard County and the municipalities therein are not immune from this nationwide crisis; and

WHEREAS, in 2018, a collaborative body known as the Brevard Prevention Coalition, a 501(c)(3) organized in the State of Florida, formed the Brevard County Opioid Misuse Task Force, hereinafter "Opioid Task Force", in response to the alarming increase in opioid-related drug misuse and opioid-related deaths within the geographic boundaries of Brevard County; and

WHEREAS, in August 2021, the Opioid Task Force implemented a comprehensive strategic plan that efficiently guides community members and resources in order to confront the crises caused by the opioid epidemic; and

WHEREAS, the Opioid Task Force meets periodically to study and analyze data related to the opioid epidemic and abatement programming; and

WHEREAS, the crisis has caused and is causing an undue strain on local government finances to implement programing to combat the opioid epidemic, to mitigate the harmful effects of the opioid epidemic in the community, and to increase educational campaigns to counteract mis-information about the addictive nature and harmful effects of opioids; and

WHEREAS, the opioid crisis is as pronounced within Brevard County and within certain municipalities within Brevard County as it was throughout most of the harder hit areas in the state of Florida and in the United States and despite the resources expended on combatting the epidemic, the opioid epidemic continues to impact the local community; and

WHEREAS, as a result of the national opioid crisis, many governmental entities throughout the country filed lawsuits against opioid manufacturers, distributors, and retailers, hereinafter referred to as the “defendants”, to hold them accountable for the damage caused by their misfeasance, nonfeasance and malfeasance, as well as to recover monetary damages for past harm and financial compensation for ongoing and future abatement efforts; and

WHEREAS, two governmental entities in Brevard County deemed the opioid crisis significant enough to secure litigation counsel and individually elect to file suit against the defendants to wit: The City of Palm Bay and the County; and

WHEREAS, the lawsuits filed by Palm Bay and the County were consolidated with other lawsuits filed by state, tribal and local governmental entities into what is known as the National Prescription Opiate Litigation in the United States District Court of the Northern District of Ohio, Eastern Division, case number 1:17-MD-2804; and

WHEREAS, as a result of this litigation, multiple defendants have begun to negotiate settlements; and

WHEREAS, the Attorney General for the State of Florida (hereinafter “Attorney General”) anticipates that Settlement funds will be distributed to the State of Florida over multiple years as part of a global settlement, and not directly to the City of Palm Bay and County, despite their position as party plaintiffs; and

WHEREAS, the Attorney General has proposed entering into agreements with local governments within the State of Florida to receive Settlement funds. This agreement (hereinafter referred to as the “State MOU”), as currently drafted, divides settlement funds into three portions designated as City/County (hereinafter individual settlement funds), Regional and State funds; and

WHEREAS, it is anticipated that the State MOU will set forth the amount and manner of distribution of City/County and Regional Settlement funds within Florida, the requirements to receive and manage Regional funds, and the purposes for which Regional funds may be used. The current draft of the State MOU is attached hereto as Exhibit A; and

WHEREAS, the Parties recognize that local control over Settlement funds is in the best interest of all persons within the geographic boundaries of Brevard County and ensures that Settlement funds are available and used to address opioid-related impacts within Brevard County and are, therefore, committed to the County qualifying as a “Qualified County” and thereby receiving Regional funds pursuant to the State MOU; and

WHEREAS, the State MOU requires that in order for Brevard County to become a Qualified County eligible to receive Regional Funding, there must be an interlocal agreement among Brevard County and Municipalities, as defined in the MOU, with combined population exceeding 50% of the total population of the Municipalities within Brevard County, with the term “Municipalities” being defined for the purpose in this Agreement as those municipalities with a population of 10,000 or more as required by the State MOU; or with population less than 10,000 who were party plaintiffs; population for purposes of the MOU is determined by specific Census data; and

WHEREAS, historically, government-funded programming geared toward abating the opioid crisis has been data driven based upon community impacts without regard to governmental jurisdictional boundaries; and

WHEREAS, the Parties recognize that it is in the best interest of the County and the Cities to enter into this interlocal agreement to ensure Brevard County is a “Qualified County” to receive Regional Funding pursuant to the State MOU.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the Parties agree as follows:

Section 1. RECITALS.

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

Section 2. DEFINITIONS.

- A. Unless otherwise defined herein, all defined terms in the State MOU are incorporated herein and shall have the same meanings as in the State MOU.
- B. “Brevard County Regional Funding” shall mean the amount of the Regional Funding paid to Brevard County in its role as a Qualified County, plus any contribution by a Signed City.
- C. “Eligible Municipalities” means: The City of Palm Bay, the City of Melbourne, the City of Titusville, the City of Cocoa, the City of Cape Canaveral, the City of Cocoa Beach, the City of Satellite Beach, the City of Indian Harbour Beach, City of West Melbourne,

City of Rockledge, Town of Indialantic, Town of Grant-Valkaria, and the Town of Palm Shores, Melbourne Village, Malabar, and Melbourne Beach.

- D. Service Area: The geographical service areas for this interlocal shall be the unincorporated areas of Brevard County and the geographical areas of any signed City.
- E. "Signed City" or "Signed Cities" means: all eligible municipalities that have signed this interlocal agreement, and the memorandum of understanding with the State of Florida.

Section 3. CONDITIONS PRECEDENT.

This Agreement shall become effective on the Commencement Date first set forth above, so long as the following conditions precedent have been satisfied:

- A. Execution of this Agreement by the County and at least the minimum number of governing bodies of the municipalities as required by the State MOU to enable Brevard County to become a Qualified County and directly receive Brevard County Regional Funding; and
- B. Execution of all documents necessary to effectuate the State MOU in its final form; and
- C. Brevard County being determined by the State of Florida to qualify as a "Qualified County" to receive Regional Funding under the State MOU; and
- D. Filing of this Agreement with the Clerk of the Circuit Court for Brevard County as required by Florida Statutes, Section 163.01.

Section 4. EXECUTION.

This Agreement may be executed in counterparts all of which, taken together, shall constitute one and the same Agreement.

Section 5. TERM AND TERMINATION.

The term of this Agreement and the obligations hereunder commences upon the satisfaction of all conditions precedent, runs concurrently with the State MOU, and will continue until one (1) year after the expenditure of all Brevard County Regional Funding, unless otherwise terminated in accordance with the provisions of the State MOU. Obligations under this Agreement which by their nature should survive, including, but not limited to any and all obligations relating to record retention, audit, and indemnification will remain in effect after termination or expiration of this Agreement.

Section 6. PROCESS FOR FUND USE.

- A. Brevard County Regional Funding will be used to fund opioid abatement in accordance with the requirements of the State MOU, this Interlocal, and any guidelines set forth by the County. Additionally, the periodic selection of opioid abatement services will take into consideration guidance by the Brevard Prevention Coalition's Opioid Misuse Task Force's Abatement Plan, as adopted by the County.
- B. The Opioid Abatement Services will be provided to residents of all service areas.
- C. The Brevard Prevention Coalition, a not-for-profit, 501(c)(3) organization exists to build a healthy, safe and substance abuse-free community in Brevard County (hereinafter, the Coalition). The Coalition coordinates and manages the Brevard County Opioid Misuse Task Force and periodically updates the Brevard County Opioid Misuse Abatement Plan, based on the data compiled for and arising out of its meetings. The abatement plan considers the State of Florida's Memorandum and reviews the data available from previous years, tending to evidence the local status of the opioid epidemic and the effect of abatement programming. Periodically, the Task Force's Opioid Misuse Abatement Plan will be submitted to the County Commission for approval, at which point it will be the County's approved Opioid Misuse Abatement Plan, until such time as the Board approves an updated plan.
- D. Once the County approves an Opioid Misuse Abatement Plan, a standing subcommittee (including representation from municipalities) will be created under the Together in Partnership Advisory Board to annually prioritize activities in the abatement plan for inclusion in Request for Proposals and utilize Together in

Partnership as the selection committee to recommend activities and agencies for funding to the Board of County Commissioners.

- E. Brevard County Regional Funding may be used to enhance current programs or develop new programs. Regional funding is not intended to supplant current funding sources and general funds, and County staff will continue to seek funding for opioid related abatement at the levels opioid abatement programs were funded as of the effective date of this agreement.
- F. The County shall use its best efforts to fund services and programs that are available to residents of Brevard County in the applicable service areas and shall strive to allocate funding and services in a manner that equally benefits residents of Brevard County in those service areas.
- G. The County shall provide the State with all required reporting on the use of Regional funds.

Section 7. ADMINISTRATIVE COSTS.

The County is responsible for administering the “Regional Funds” remitted pursuant to the State MOU and, shall provide all support services including but not limited to legal services, as well as contract management, program monitoring, and reporting required by the State MOU and is entitled to the maximum allowable administrative fee pursuant to the State MOU. The administrative fee will be deducted annually from the amount of available Brevard County Regional Funds, and the remaining Brevard County Regional Funds will be spent as provided in the State MOU and as provided herein.

Section 8. SIGNED CITY CONTRIBUTIONS.

Any Signed City may contribute its’ individual settlement funds to the County for use in all service areas. To the extent that a signed City contributes its’ individual settlement funds to the County that Signed City must timely satisfy all reporting requirements of the State of Florida Memorandum of Understanding (MOU), and provide any other reporting required by County.

Section 9. NON-APPROPRIATION.

This Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County official, officer or employee creates any obligation to appropriate or make monies available for the purposes of the Agreement beyond the fiscal year in which this Agreement is executed. The obligations of the County as to funding required pursuant to the Agreement are limited to an obligation in any given fiscal year to budget and appropriate from Brevard County Regional Funds annually which are designated for regional use pursuant to the terms of the State MOU. No liability shall be incurred by the County beyond the monies budgeted and available for the purpose of the Agreement. If funds are not received by the County for any or all of this Agreement for a new fiscal period, the County is not obligated to pay or spend any sums contemplated by this Agreement beyond the portions for which funds were received and appropriated. The County agrees to promptly notify the Signed Cities in writing of any subsequent non-appropriation.

Section 10. INDEMNIFICATION.

Each Signed City and the County shall be responsible for their respective employees' acts of negligence when such employees are acting within the scope of their employment and shall only be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein shall be construed as a waiver of sovereign immunity, or the provisions of section 768.28, Florida Statutes, by any Party. Nothing herein shall be construed as consent by either Party to be sued by third Parties for any matter arising out of this Agreement.

Section 11. SEVERABILITY.

If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable.

Section 12. AMENDMENTS TO AGREEMENT.

This Agreement may be amended, in writing, upon the express written approval of the governing bodies of all the Parties.

Section 13. FILING OF AGREEMENT.

The County shall file this Agreement with the Clerk of the Circuit court as provided in Section 163.01(11), Florida Statutes.

Section 14. GOVERNING LAW.

The laws of the State of Florida shall govern this Agreement.

Section 15. NOTICES.

Any notices required or permitted by this Agreement shall be in writing and shall be deemed delivered upon hand delivery, or three (3) days following deposit in the United States postal system, postage prepaid, return receipt requested, addressed to the Parties at the addresses specified on the Party's signature page to this Agreement.

Section 16. PUBLIC RECORDS AND AUDITING.

- a. In performance of this Contract, the Parties shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures.
- b. All documents, papers, books, records and accounts made or received by the Parties in conjunction with this Agreement, and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County. The County or any of its duly authorized representatives reserves the right to audit the Party's records related to this Agreement at any time during the performance of this Agreement and for a period of five (5) years after final payment is made, or otherwise required by law. The Parties shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes, or the Parties turn said records over to County.
- c. All records or documents created by or provided to the Parties by the County in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.
- d. All Parties understand that each is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. The Parties agree that any written communication with the Parties, to include emails, email addresses, a copy of this Agreement, and any supporting documentation are

subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.

e. "Public Records" are defined as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (section 119.011(12), Florida Statutes).

f. Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the County related to the performance of the services under this Agreement do not fall under a specific exemption under Florida or federal law, the records must be provided to anyone making a public records request. It will be the Party's duty to identify any information in records created by the Party which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

g. Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the County. The County shall direct individuals requesting public records to the public records custodian listed below. If the County does not possess the requested records, the County shall immediately notify the applicable Party of the request and the applicable Party must provide the records to the County or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so the County can comply with the requirements of section 119.07, Florida Statutes. The applicable Party may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated below.

h. Should any person or entity make a public records request of the County which requires or would require the County to allow inspection or provide copies of records which a Party maintains are exempt under the Public Records Law or otherwise confidential, it shall be the Party's obligation to provide the County within a reasonable time of notification by the County to the applicable Party of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of section 119.07(1)(e) and (f), Florida Statutes.

i. Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Party to the County which the Party maintains is exempt or confidential from such inspection/production as a public record, said Party agrees to indemnify the County for all damages and expenses, including attorney's fees and costs, to the extent permitted by State law. The applicable Party shall hire and compensate attorney(s) who shall represent the interests of the County as well as the Party in defending such action. The Party shall also pay any costs to defend such action and shall pay any costs and attorney's fees which

may be awarded pursuant to section 119.12, Florida Statutes, to the extent permitted by Florida state law.

j. Should a Party fail to provide the public records to the County within a reasonable time, the Party may be subject to penalties under section 119.10, Florida Statutes, including civil liability for the reasonable cost of enforcement incurred by the entity requesting the records and may be subject to criminal penalties. The Party's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.

k. Each Party shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Party does not transfer the records to the County.

l. Upon completion of the Agreement, each Party shall transfer, at no cost, to the County all public records in possession of the Party or keep and maintain public records required by the County to perform the service. If a Party transfers all public records to the County upon completion of the Agreement, that Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If a Party keeps and maintains public records upon completion of the Agreement, the Party shall meet all applicable requirements for retaining public records.

IF ANY PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SAID PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BRITTANY RAY, 2725 JUDGE FRAN JAMIESON WAY, B-103, VIERA, FL 32940, BITTANY.RAY@BREVARDFL.GOV, AT (321) 633-2076

Section 17. EMPLOYMENT ELIGIBILITY VERIFICATION (E-Verify).

A. The PARTIES shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by each Party during the term of the Agreement. Upon request, the Party shall provide acceptable evidence of their enrollment. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.

B. Each Party shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

C. Each Party agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as required by section 448.095(2)(b), Florida Statutes, and to make such records available to the County consistent with the terms of Party's enrollment in the program.

D. Compliance with the terms of this section is made an express condition of this Agreement and the County may treat a failure as grounds for immediate termination of this Agreement as to any applicable Party.

E. A Party who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the Party hires or employs a person who is not eligible for employment.

F. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 18. ENTIRETY, CONSTRUCTION OF AGREEMENT.

This Agreement represents the understanding between the Parties in its entirety and no other agreements, either oral or written, exist between the Parties. The Exhibits are attached and incorporated into this Agreement by this reference. The Parties acknowledge that they fully reviewed this agreement and had the opportunity to consult with legal counsel of their choice, and that this agreement shall not be construed against any Party as if they were the drafter of this Agreement. Each Party warrants that it is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to sign and bind that Party. All conditions and assurances required by this Agreement are binding on Parties and their authorized successors in interest.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

BREVARD COUNTY, a political subdivision
of the State of Florida

ATTEST:

CLERK

By: _____
Rita Pritchett, Chair

As approved by the Board: _____

Reviewed for legal form & content

County Attorney

All notices under this Agreement shall be sent to:
Brevard County Housing and Human Services Department
c/o Director
2725 Judge Fran Jamieson Way, B-103
Viera, FL 32940

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF CAPE CANAVERAL, FLORIDA

By: _____

Bob Hoog, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Cape Canaveral

c/o Todd Morley, City Manager

100 Polk Avenue

Cape Canaveral, FL 32920

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF COCOA, FLORIDA

By: _____

Mike Blake, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Cocoa

c/o Stockton Whitten, City Manager

65 Stone Street

Cocoa, FL 32922

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF COCOA BEACH, FLORIDA

By: _____

Ben Malik, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Cocoa Beach

c/o Jim McKnight, City Manager

2 S Orlando Avenue

Cocoa Beach, FL 32932

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF GRANT-VALKARIA, FLORIDA

By: _____

Del Yonts, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Grant-Valkaria

c/o Jason Mahaney, Town Administrator

1449 Valkaria Road

Grant Valkaria, FL 32950

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF INDIALANTIC, FLORIDA

By: _____

Dave Berkman, Mayor Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Indialantic

c/o Michael Casey, Town Manager

216 5th Avenue

Indialantic, FL 32903

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF INDIAN HARBOUR BEACH, FLORIDA

By: _____

Scott Nickle, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Indian Harbour Beach

c/o Mark Ryan, City Manager

2055 South Patrick Drive

Indian Harbour Beach, FL 32937

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF MALABAR, FLORIDA

By: _____

Patrick T. Reilly, Mayor Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Malabar

c/o Matthew Stinnett, Town Manager

2725 Malabar Road

Malabar, FL 32950

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF MELBOURNE, FLORIDA

By: _____

Paul Alfrey, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Melbourne

c/o Shannon Lewis, City Manager

City Hall

Fifth Floor

900 East Strawbridge Avenue

Melbourne, FL 32901

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF MELBOURNE BEACH, FLORIDA

By: _____

Wyatt Hoover, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Melbourne Beach

c/o Elizabeth Mascaro, Town Manager

507 Ocean Avenue

Melbourne Beach, FL 32951

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF MELBOURNE VILLAGE, FLORIDA

By: _____

Tabitha Niemann, Mayor Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Melbourne Village

c/o Jimmy Collen, Town Clerk/Treasurer

555 Hammock Road

Melbourne Village, FL 32904

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF PALM BAY, FLORIDA

By: _____

Rob Medina, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Palm Bay

c/o Suzanne Sherman, City Manager

120 Malabar Road

Palm Bay, FL 32907

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

TOWN OF PALM SHORES, FLORIDA

By: _____

Carol M. McCormack, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

Town Attorney

Town Clerk

All notices under this Agreement shall be sent to:

Town of Palm Shores

c/o Patricia J. Burke, Town Clerk

5030 Paul Hurtt Lane

Palm Shores, FL 32940

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF ROCKLEDGE, FLORIDA

By: _____

Thomas J. Price, Mayor Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Rockledge

c/o Brenda Fettrow, City Manager

1600 Huntington Lane

Rockledge, FL 32955

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF SATELLITE BEACH, FLORIDA

By: _____

Steve Osmer, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Satellite Beach

c/o Courtney Barker, City Manager

565 Cassia Boulevard

Satellite Beach, FL 32937

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF TITUSVILLE, FLORIDA

By: _____

Daniel E. Diesel, Mayor Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of Titusville

c/o Scott Larese, City Manager

555 S Washington Avenue

Titusville, FL 32796

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representative, as of the day and year first written above.

CITY OF WEST MELBOURNE, FLORIDA

By: _____

Hal J. Rose, Mayor

Date

As approved by the Board: _____

Approved as to form and
legal sufficiency:

Attest:

City Attorney

City Clerk

All notices under this Agreement shall be sent to:

City of West Melbourne

c/o Scott Morgan, City Manager

2240 Minton Road

West Melbourne, FL 32904



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nelson Moya, Chief of Police

DATE: 1/6/2022

RE: Consideration of the Odyssey Charter School Junior/Senior High School Resource Officer Agreement for the 2021/2022 school year.

Attached is a School Year 2021/2022 Agreement between Odyssey Charter School Jr/Sr High and the City of Palm Bay for the School Resource Officer (SRO) Program. This Agreement includes one SRO assigned to the Odyssey Charter School Jr/Sr High campus located at 1350 Wyoming Dr SE, Palm Bay, FL 32909. This Agreement continues the SRO Program with the Memorandum of Understanding (MOU) to be effective January 24, 2022, with an expiration date of May 27, 2022. The MOU includes Exhibits I and II with terms set forth by the relating to program goals and guidelines for the School Resource Officers.

REQUESTING DEPARTMENT:

Police Department

FISCAL IMPACT:

Odyssey Charter School Jr/Sr High will contribute \$31,000 towards the SRO Program to be deposited as revenue into G/L Account# 001-0000-337-2001. The City's share for this additional SRO position was allocated within the FY22 approved budget.

RECOMMENDATION:

Motion to approve and authorize the City Manager to execute the Odyssey Charter School Jr/Sr High School Resource Officer Agreement for the 2021/2022 school year.

ATTACHMENTS:

Description

SRO Agreement Odyssey Charter School Jr Sr High Effective 01242022

AGREEMENT

THIS AGREEMENT, is entered into and made effective this 24th day of January, 2022, irrespective of when signed, by and between **THE CITY OF PALM BAY, FLORIDA**, hereinafter called the “**CITY**,” and **ODYSSEY CHARTER SCHOOL JR/SR HIGH**, hereinafter called the “**CHARTER**,” each individually a “Party,” collectively “Parties.”

WITNESSETH:

WHEREAS, the CITY and the CHARTER desire to assign a School Resource Officer (“SRO”) to the school campus on each school day during the school year; and

WHEREAS, in accordance with the Marjory Stoneman Douglas High School Public Safety Act, the CITY and the CHARTER believe that this partnership will improve communication among local law enforcement entities, including the City of Palm Bay Police Department for the CHARTER’s staff members, as well as the faculty and students attending the school and the parents of such students;

NOW, THEREFORE, in consideration of the covenants and promises made below, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The recitals set forth above are true and correct and are hereby incorporated into this AGREEMENT.
2. This AGREEMENT shall be effective commencing January 24, 2022, and terminate on May 27, 2022, unless otherwise terminated earlier as provided herein. After the expiration of the term ending on May 27, 2022, this Agreement may be renewed by the Parties for successive one-year periods (commencing on August 1st and ending on June 1st of each successive year) upon the written agreement of the Parties. Thus, the Agreement will not automatically renew and any renewal can only occur upon the written agreement of the Parties. Either Party may terminate this AGREEMENT upon thirty (30) days’ written notice to the other Party. Any termination of this AGREEMENT that results in overpayment to the CITY will result in the return of funds to the CHARTER equal to the proportionate amount of time remaining in the AGREEMENT.

3. The CITY, through the Palm Bay Police Department, shall assign a SRO who is a sworn law enforcement officer, to work on each school day, consistent with the School Board of Brevard County's teacher work calendar.
4. The parties agree that "school day" includes the time of student arrival, between class breaks, all lunch periods, and after school during and through the conclusion of school dismissal. Any additional extra duty assignment requests; i.e., extracurricular events outside of normal school hours, CHARTER will request an extra duty detail assignment.
5. The parties agree that at all times the SRO is on campus of the CHARTER, he/she is a City of Palm Bay Police Department officer, and shall remain exclusively in the course and scope of employment with the CITY, and responsible only to the CITY and Palm Bay Police Department chain of command.
6. The CHARTER agrees to reimburse the CITY a flat-fee of Thirty-One Thousand and 00/100 Dollars (\$31,000.00) per SRO for the salary, benefits, and associated costs of the CITY. This reimbursement will be invoiced in two separate installments.
7. The CITY shall provide the law enforcement equipment and training related to the services provided by the SRO. CHARTER agrees to provide an appropriate work space on the school campus.
8. CHARTER staff or any employee under the jurisdiction of the CHARTER shall not conduct an internal or administrative investigation or inquiry of alleged improper conduct on the part of any employee of the CITY. All concerns or allegations of improper conduct shall be forwarded immediately upon receipt by the Principal or designee to the Chief of Police or designee.
9. Should the SRO witness inappropriate or unacceptable activity on campus, he/she will immediately report the incident to the CHARTER school administration and, as appropriate, take any necessary law enforcement action. Both Palm Bay Police Department and CHARTER administrative procedures shall be followed. In the event of a policy conflict, the parties agree that Palm Bay Police Department policy and procedure will prevail.

10. Should it become necessary for the SRO to conduct a formal law enforcement interview with a student, the Palm Bay Police Department policy and procedure will be followed.
11. At all material times, the SRO shall wear the CITY's Police Department uniform or other attire as authorized by the Chief of Police.
12. To the extent permitted by law, CHARTER shall indemnify, defend, hold harmless free from liability, the CITY, its officers, agents, or employees while acting as such from all damages, costs, and expenses, including attorney's fees, which the CITY may become obligated to pay by reason of the services contemplated in this Agreement except if caused by the sole negligence of the CITY.
13. Nothing in this Agreement shall be construed to constitute a waiver of, or in any way affect or impinge, the rights, privileges and immunities of any Party provided or arising pursuant to the provisions of Section 768.28, Florida Statutes, as amended from time to time, or any corresponding provisions of law.
14. The CITY and the CHARTER agree to follow the goals and guidelines stipulated in the attached Exhibits I and II, which are incorporated by reference herein and made a part hereof.
15. This AGREEMENT and respective Exhibits I and II constitute the entire agreement between the CITY and the CHARTER, and contains all of the agreements described herein between the Parties with respect to the subject matter contained herein. This AGREEMENT supersedes all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter of this AGREEMENT and respective Exhibits I and II.
16. No provision of this AGREEMENT may be changed or modified except by written agreement signed by the Parties.
17. This AGREEMENT is for the benefit of CITY and the CHARTER. No other person is intended to be a beneficiary under this AGREEMENT. No employee of the CITY, CHARTER or Palm Bay Police Department shall derive any property right in his/her employment not otherwise enjoyed by such employee, by virtue of this AGREEMENT. Furthermore, neither the CHARTER nor the CITY assumes any duties to any individual, including foreseeable victims of

crime, not otherwise imposed by common law, by virtue of the execution of this AGREEMENT.

18. The Parties acknowledge that, by the signing of this AGREEMENT, they have the right, power, legal capacity, and authority to enter into, and perform their respective obligations under this AGREEMENT, and no approvals or consents of any persons other than the Parties are necessary in connection with this AGREEMENT.
19. The Parties shall not assign nor transfer their respective obligations under this AGREEMENT, but this AGREEMENT shall continue in full force and effect and shall be binding on the Parties' respective successors.
20. The CITY has designated the City Manager and Chief of Police and the CHARTER has designated the _____ for the purpose of implementing the terms of this AGREEMENT.
21. To the extent that any provision of this AGREEMENT shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deleted from this AGREEMENT, and the validity and enforceability of the remainder of such provision, if any, and of this AGREEMENT shall be unaffected.
22. This AGREEMENT shall be subject to and governed by the laws of the State of Florida, without regard to that state's conflict of laws principles. Venue for any action to interpret or enforce this AGREEMENT or that otherwise arises out of this AGREEMENT, shall lie exclusively in the appropriate state court in and for Brevard County, Florida.
23. This AGREEMENT may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
24. The Parties acknowledge that many of their communications and documentation pertaining to this AGREEMENT may contain sensitive security information that is confidential and exempt from public records disclosure requirements in accordance with Section 281.301, Florida Statutes, and Section 119.071(3), Florida Statutes. Each Party acknowledges and agrees that it will comply with all aspects of Florida law relative to this AGREEMENT, including, but not limited to, the provisions of Chapters 119 and 281, Florida

Statutes, pertaining to security systems / features, personnel schedules, duties, assignments, security personnel numbers, plans, records, and meetings that may be exempt from public access or disclosure.

IF THE CHARTER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CHARTER SHALL CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS (CURRENTLY City Clerk, Terese Jones) AT 321-952-3400 OR AT EMAIL: terese.jones@palmbayflorida.org OR AT ADDRESS: City of Palm Bay, Legislative Department, 120 Malabar Road SE, Palm Bay, FL 32907, (ATTENTION: RECORDS).

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the authorized representatives of each of the Parties hereto sign this AGREEMENT below on the date specified below, but in all events effective August 10, 2021.

CITY OF PALM BAY, FLORIDA

**ODYSSEY CHARTER SCHOOL
JR/SR HIGH**

BY _____

BY _____

Dated: _____, 2021

Dated: _____, 2021

Approved as to form:

Approved as to form:

Dated: _____, 2021

Dated: _____, 2021

Attachments: Exhibit I
 Exhibit II

Exhibit I

SCHOOL RESOURCE OFFICER PROGRAM GOALS

1. To enhance student safety and improve the security of school campuses;
2. To develop and promote positive relationships between students and law enforcement officers;
3. To foster a better understanding of law enforcement officers in the community;
4. To develop positive concepts of law enforcement;
5. To identify and prevent delinquent behavior through counseling and referral;
6. To provide assistance and support for victims of crime identified within the school setting, including abused children;
7. To develop a better appreciation of citizenship, citizens' rights, obligations, and responsibilities;
8. To provide information about crime prevention;
9. To enhance knowledge of the fundamental concepts and structure of the law; and
10. To provide materials and consultative assistance to teachers and parents on various law education topics.

Exhibit II

SCHOOL RESOURCE OFFICER PROGRAM GUIDELINES

1. The School Resource Officer (SRO) is a CITY police officer, and shall remain exclusively an employee of the CITY and responsible to the police department chain of command.
2. Prior to the first day of school, the SRO will present to the Principal a written plan of action for the school year. The plan should include the SRO's work and activities schedule, and if appropriate, his/her work schedule and duties for District pre-planning and post-planning activities. This plan should also include an outline of classroom presentations that may be conducted by the SRO, as well as the number of instructional hours that the SRO may provide.
3. Not less than one (1) time per semester, the SRO and Principal will meet to review the SRO's plan of action and verbally discuss the SRO's progress. As necessary, additional meetings may be requested by either the Principal or the SRO to review the progress of the plan of action.
4. The SRO may be asked to provide supplemental instruction at the discretion of the Principal, as qualified. The Attorney General's (SRO Basic and Advanced Training) philosophy with regard to in-class SRO presentations will be used as a guide.
5. The SRO will engage with students in the following ways: during student arrival, between class breaks and during lunch periods, and during and through the conclusion of school dismissal.
6. The SRO shall report to his/her assigned school Principal daily. The SRO shall be assigned specifically to the school during all regular school days. If the SRO is called away from the school for a substantial portion of the school day, the SRO shall notify the Principal and provide the Principal with a means of contacting the SRO or the appropriate law enforcement agency.
7. If the SRO witnesses inappropriate or unacceptable activity on campus, he/she shall report the incident to the school administration and, as

appropriate, take law enforcement action. Both police department and school administrative procedures shall be followed. In the event of a policy conflict, police department policy and procedure shall prevail. The SRO shall avoid making arrests on school grounds except under exigent circumstances. If arrest is necessary, the SRO will be called to execute proper law enforcement procedure. If at all possible, the SRO should coordinate arrest and other operational strategies with the Principal.

8. Should it become necessary for the SRO to conduct a formal law enforcement interview with a student, the interview should be coordinated with the Principal, parents shall be notified by school staff, and police department policy will exclusively be followed.
9. The SRO is encouraged to attend parent, faculty, and staff meetings, as a part of the school administrative team, and to develop, support, and cultivate an understanding of the SRO program.
10. As determined by the police department, the SRO shall submit activity reports to be reviewed by the Principal and the Director of District and School Security.
11. The SRO has the authority to request a review of contract provisions after reasonable review and conferencing between the SRO and the Principal has occurred. The following procedures should be followed:
 - A. The SRO will request that a review of the contract provisions be completed stating the reasons for the request in writing. The request will be directed to the SRO's law enforcement supervisor, with a copy being provided to the Principal. A copy of that request must also be provided to the Chief of Police or his/her designee and the Director of the Office of District and School Security.
 - B. Within a reasonable period of time after receiving the request for review from the SRO, the Director of the Office of District and School Security, will meet with the Chief of Police, or his/her designee, to mediate or resolve any contract provision concerns that may exist between the SRO and the staff at his/her assigned school.

1. With the approval of the Chief of Police or his/her designee, and the Director of the Office of District and School Security, the SRO, and specified members of the school staff, may be required to be present at a mediation meeting.
 2. If, within a reasonable amount of time after commencement of mediation, the contract provision concerns cannot be resolved or mediated, in the opinion of both the Chief of Police, and the Director of the Office of District and School Security, or designees thereof, a reasonable alternative action will be identified and agreed upon in writing.
12. If, in the opinion of the Principal, the SRO is no longer effective in his or her role as an SRO, the Principal may request the reassignment of the SRO from his/her duties at school. In such cases, the following procedures should be followed:
 - A. The Principal will meet with the SRO, and the SRO's law enforcement supervisor and express the concerns and needs of the school. The Principal will work collaboratively with the SRO and SRO's law enforcement supervisor to clearly identify in writing their expectations, as well as the SRO's agreed upon school related duties and responsibilities. As appropriate, the SRO's law enforcement supervisor may implement a written action plan.
 - B. If, after reasonable review and discussion between the SRO, the SRO law enforcement supervisor and the Principal has occurred, in the opinion of the Principal the SRO's effectiveness remains questionable, the Principal may request the SRO be reassigned from their position at their assigned school.
 - C. The Principal shall contact the Director of District and School Security and request that the SRO be removed from the program at his/her school.
13. School Board employees shall not conduct an internal investigation of alleged improper conduct on the part of the SRO. The Principal or any other BOARD employee shall report all allegations of improper conduct to either the SRO's law enforcement supervisor or to the police department's Internal Affairs function.

14. At any time during the school year when students are not in school, or at the conclusion of the regular school year, the SRO shall be assigned other duties by the Chief of Police.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nancy A. Bunt, Community & Economic Development Director

DATE: 1/6/2022

RE: **Consideration of an Addendum Counteroffer to the purchase offer for City- owned surplus real estate, generally located at 1230 Jacob Street SE, from buyer Fred DeNicci Construction (\$70,000).**

In 1992, the City acquired a 2.3-acre lot generally located at 1230 Jacob Street SE (Tax ID: 2930053) through a bankruptcy settlement with Atlantic Gulf Communities General Development Corp.

On April 15, 2021, City Council declared this property as surplus real estate. This property has been listed for sale through the City's contract residential real estate broker, Ellingson Properties, LLC.

Ellingson Properties prepared a Comparative Market Analysis (CMA) with a suggested list price of \$135,000. After receiving multiple offers, the Buyer, Fred DeNicci Construction has submitted the highest and best offer of \$135,505. On October 7, 2021, City Council accepted the \$135,505 offer and the buyer began his due diligence. After conducting a portion of his due diligence, the buyer's agent has submitted the following Letter and Addendum (attached).

To summarize the findings from the Buyer and the responses from City staff:

1. There are no short- term plans by the City to extend water/sewer lines to this location.
2. Buyer could split the property into four lots with city water hookup (buyer pays costs) or two lots without needing to connect to city water, in accordance with the City's minor subdivision requirements.
3. Staff would not support a variance to allow more than one lot split without water and/or sewer, in accordance with the City's minor subdivision requirements.
4. The estimated construction cost range to run 2,500 – 3,000 linear feet of 6" piping and connect would be approximately \$150,000-\$200,000.

Additionally, the Buyer has identified wetlands on the property, and will need to determine the cost to mitigate. The City's Broker provided a recent CMA for recently sold properties with similar acreage with a value of \$101,194.50. At this time there are no other offers on this property.

REQUESTING DEPARTMENT:

Community & Economic Development

FISCAL IMPACT:

Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

RECOMMENDATION:

Motion to authorize the City Manager to execute the addendum or provide a counter offer for City-owned surplus real estate generally located at 1230 Jacob Street SE (Tax ID: 2930053) from buyer Fred DeNicci Construction.

ATTACHMENTS:**Description**

Letter from Buyer's Agent

Comps from Broker

Addendum to Contract - Price Reduction

Response emails from Utilities and GM

Wetland Map



Memo

To: Council Members, City of Palm Bay

From: Jenny Walker, Broker-Associate, Ellingson Properties, LLC

Date: December 1, 2021

Subject: 1230 Jacob Street, Palm Bay, FL 32909 – Tax ID# 2930053 - Renegotiation

This message is to illustrate the reasoning behind the negotiation for price reduction on 1230 Jacob Street – a vacant lot. Offer was made based on the fact of developing 6 parcels from the 2.3 acres of land. Due to issues found thus far with the land itself as well as zoning, the number of lots buyer was informed that could be developed was reduced and therefore, monetary feasibility of this project was affected.

A conference call was initiated on Wednesday, November 24, 2021, between the Buyer, Fred Rezvani/Fred Denicci Construction, LLC, Joan Junkala, Nancy Bunt, Chris Little, Chris Balter, Pat Murphy, Jim Williams, and Jenny Walker.

Findings:

- 1) There are no plans by City of Palm Bay to send city water to Jacobs and adjacent streets
- 2) No variance support for water hookup for this lot
- 3) Cost to run loop for city water – firm estimates to run 2,500 – 3,000 linear feet of 6” piping and connect \$150,000-\$200,000
- 4) Zoning change: Lots are now ½ acre for divide; previously available lots of ¼ acres was grandfathered in.
- 5) Buyer is allowed to split property to four lots with city water hookup (buyer pays costs) or is allowed two lots on this parcel without needing to connect to city water

Solutions:

- 1) Buyer incurs costs of water connection fees for 4 lots - exponentially increases costs of development, value of four lots on parcel will be calculated much higher than standard market value: not feasibly possible for buyer
- 2) Perform the split of the property to just two lots without having to connect to city water
- 3) Renegotiate price of parcel
- 4) Cancel contract

“Exceptional Service, Exceptional Results”



Buyer would still like to develop this parcel if possible, but the contract pricing is now set too high for the land with the current findings during the meetings with the city representatives. Buyer is willing to stay in the offer contract with a renegotiated price of \$70,000 for the parcel. Buyer's intent now is to focus on building two homes at the one acre plus lot size per home.

Thank you for this consideration.

Kind Regards,
Jenny

Jenny Walker, CRS, GRI
Broker-Associate
Ellingson Properties, LLC

	A		B		C		D	E	
	Features/adjustments		Subject		Comp1		Adjustment Co	Comp2	
1			1230 Jacobs		420 Iarino			347 Halloran	
2	Address				Closed 10/19/21			Closed 10/19/21	
3	Closing Date								
4	MLS#		905878		916139			915775	
5	Sqft Living								
6	Price Sold/Contingent				\$31,000			\$ 31,000.00	
7	View		Needs Cleared and surveyed		Needs Cleared and surveyed			Needs Cleared and surveyed	
8	Lot Size		2.3 acres (2 lots)		0.6 acres		\$ 72,000.00	0.69 acres	
9	Condition		Vacant land		Vacant land			Vacant land	
10	City Water		no		no			no	
11	Garage								
12	Kitchen								
13	Baths								
14	Central Vac								
15	Fireplace								
16	Flooring								
17	Completely Solar								
18	Impact Windows								
19	Pool/Spa								
20	Dock								
21	Total Adjustments						\$72,000		
22	Adjusted Price								
23	Adjust SF Price								
24	Adjusted Comp Price						\$103,000		
25							CMA Value Com	\$ 101,194.50	

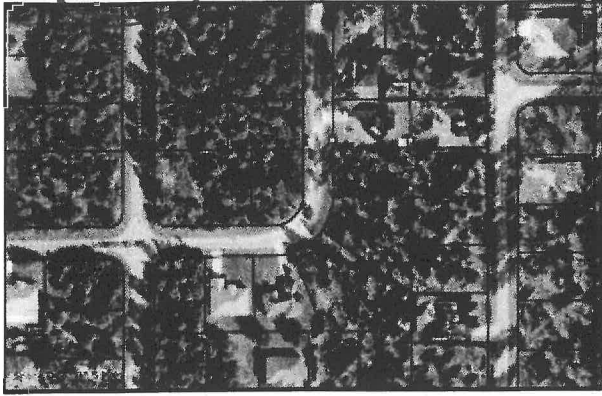
	F	G	H	I	J	K
	Adjustment Comp	Comp3	Adjustment Com	Comp 4	Adjustment C	Comp 5
1		7041 Artesia		0000 Oakfield		3191 Metcalf
2		Closed 10/13/20		Closed 10/01/21		Closed 8/31/21
3						
4		900742		909218		911553
5						
6		\$ 53,000.00		\$ 58,000.00		\$30,000
7		Needs cleared and surveyed		Cleared prepped		Needs cleared and surveyed
8	\$ 58,855.00	1.03 acres	\$ 49,912.00	.69 acres	\$ (25,000.00)	0.67 acres
9		Vacant land		Vacant land		Vacant land
10		no		no		no
11			\$ -			
12						
13						
14						
15						
16						
17						
18						
19						
20						no
21	\$ 58,855.00		\$ 49,912.00		\$ 85,000.00	
22						
23						
24	\$ 89,855.00		\$ 102,912.00		\$ 143,000.00	
25						

	L	M	N	O
1	Adjustment Co	Comp 6	Adjustment Comp 6	
2		6970 Hacienda		
3		Closed 6/11/21		
4		866637		
5				
6		\$ 45,000.00		
7		Needs cleared and surveyed		
8	\$ 59,500.00	1.14 acres	\$ 33,900.00	
9	\$ -	Vacant land		
10		no		
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21	\$ 59,500.00		\$ 33,900.00	
22				
23				
24	\$ 89,500.00		\$ 78,900.00	
25				

916139 Closed Vacant Land

420 Larino Rd SW, Palm Bay, FL 32908

LP:\$35,000 SP:\$31,000



Area: 345 - SW Palm Bay
Sub Type: Residential
Subdivision/Condo Name: PORT MALABAR UNIT 30
County Sub/Condo Name: PORT MALABAR UNIT 30
Waterfront:
Waterfront Type:
Water Frontage Ft:
Zoning:
Sale Option:
Road Frontage Ft:
Close Date: 10/19/2021

County: Brevard
General: South
County Loc:
Measurements From:
Lot Dimensions:
Acreage: 0.6
List Price/Acres: \$58,333.33
Lot SqFt: 26,136
of Lots:
Unit #:
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT)
Sold-As-Is:

Narrative: Nice buildable lot in Palm Bay with the road being repaved Owner financing terms is available on this lot or any one of our 3000 lots in Inventory Full price offer only. Price may change without notice, Please call to confirm. Close to Bayside Lakes shopping school, THIS LISTING IS FOR LOT 6 ONLY

Directions: SW PALM BAY

FEATURES

Land Use:
Site Description:
Lot Description:
Utilities:

no water
 no sewer

Water Amenities:
Frontage Description:
Association Fee Incl:
Common Amenities:
Possession:
Current Adjacent Use:

Front Faces: W
Security/Safety:
Docs on File:
Possible Financing: Cash; Holding 1st; Pvt Financing Avbl
55+ Community: No
Gated Community: No
Showing:
Measurements From:
Elementary School: Westside
Middle School: Southwest
High School: Bayside

Tax Acct: 2914286

Tax ID: 29-36-25-Kj-01412.0-0006.00

Legal Desc: PORT MALABAR UNIT 30 LOTS 6 BLK 1412

Tax Year: 2020

Taxes: 202.55



Presented by
 Jennifer Walker
 Ellingson Properties
 321-544-4751
 jenny@gregellingson.com
 http://www.gregellingson.com

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915775 Closed Vacant Land

347 Halloran St SE, Palm Bay, FL 32909

LP:\$105,000 SP:\$31,000



Area: 343 - SE Palm Bay
Sub Type: Residential
Subdivision/Condo Name: PORT MALABAR UNIT 25
County Sub/Condo Name: PORT MALABAR UNIT 25
Waterfront:
Waterfront Type:
Water Frontage Ft:
Zoning:
Sale Option:
Road Frontage Ft:
Close Date: 10/19/2021

County: Brevard
General: South
County Loc:
Measurements From:
Lot Dimensions:
Acreage: 0.69
List Price/Acres: \$152,173.91
Lot SqFt: 30,056
of Lots: 3
Unit #:
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT)
Sold-As-Is:

Narrative: Nice buildable lotS in Palm Bay with the road being repaved Owner financing terms is available on this lot or any one of our 3000 lots in Inventory Full price offer only. Price may change without notice, Please call to confirm. Close to Bayside lakes shopping school,

Directions: SE PALM BAY

FEATURES

Land Use:
Site Description:
Lot Description:
Utilities:

no water
 no sewer

Water Amenities:
Frontage Description:
Association Fee Incl:
Common Amenities:
Possession:
Current Adjacent Use:

Front Faces: S
Security/Safety:
Docs on File:
Possible Financing: Cash; Holding 1st; Pvt Financing Avlbl
55+ Community: No
Gated Community: No
Showing:
Measurements From:
Elementary School: Westside
Middle School: Southwest
High School: Bayside

Legal Desc: PORT MALABAR UNIT 25 LOTS 7,8,9 BLK 1283

Tax Acct: 2947285

Tax ID: 29-37-31-Gv-01283.0-0007.00

Tax Year: 2020

Taxes: 352.71



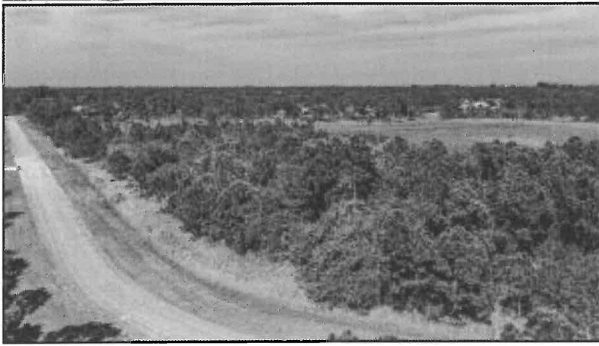
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7041 Artesia Ave, Grant Valkaria, FL 32949

LP:\$53,000 SP:\$53,000

900742 Closed Vacant Land



Area: 342 - Malabar/Grant-Valkaria
Sub Type: Residential
Subdivision/Condo Name: RIVERVIEW TERRACE
County Sub/Condo Name: RIVERVIEW TERRACE, AMENDED PLAT
Waterfront: No
Waterfront Type:
Water Frontage Ft:
Zoning:
Sale Option:
Road Frontage Ft:
Close Date: 10/13/2021

County: Brevard
General: South
County Loc:
Measurements From: Other
Lot Dimensions:
Acreage: 1.03
List Price/Acres: \$51,456.31
Lot SqFt: 44,867
of Lots:
Unit #:
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT)
Sold-As-Is:

Narrative: BEAUTIFUL LOT IN DESIRABLE RIVERVIEW TERRACE. NO TIMEFRAME TO BUILD, 1.03 ACRE NATURAL STATE HOMESITE. HOA FEE IS ONLY \$75.00 ANNUAL. CENTRAL LOCATION JUST MINUTES TO SEBASTIAN'S WATERFRONT DISTRICT. ADJACENT LOT AT 7061 ARTESIA IS ALSO FOR SALE. THE RIVERVIEW TERRACE COMMUNITY PROVIDES FOR A SERENE NATURAL COUNTRY SETTING WITH OPEN SPACES FOR WALKING AND BIKING.
Directions: US 1 TO SHELL PIT, TO OLD DIXIE, TO BARRY TO INDIAN RIVER BLVD.

FEATURES

Land Use: Single Family
Site Description: Natural State
Lot Description: Fill May Need; West of US1
Utilities: Septic; Well Water

Water Amenities:
Frontage Description:
Association Fee Incl: Common Area Maint; Common Taxes; Reserve Fund
Common Amenities:
Possession: Closing
Current Adjacent Use: Residential

HOA Amt: 75
HOA Frequency: Yearly
HOA Info: HOA Amt: 75; HOA Frequency: Yearly

Front Faces: E
Security/Safety:
Docs on File: Survey
Possible Financing: Cash; Conventional
55+ Community: No
Gated Community: No
Showing:
Measurements From: Other
Elementary School: Sunrise
Middle School: Stone
High School: Bayside

Svces not Prov.: Accepting Offers

Legal Desc: RIVERVIEW TERRACE, AMENDED PLAT LOT 89

Tax Acct: 3009461

Tax ID: 30-38-04-79-00000.0-0089.00
Deed Restrictions: Yes
Road Surface: Paved

Tax Year: 2020

Taxes: 487.79
HOA Amt: \$75 Yearly



Presented by
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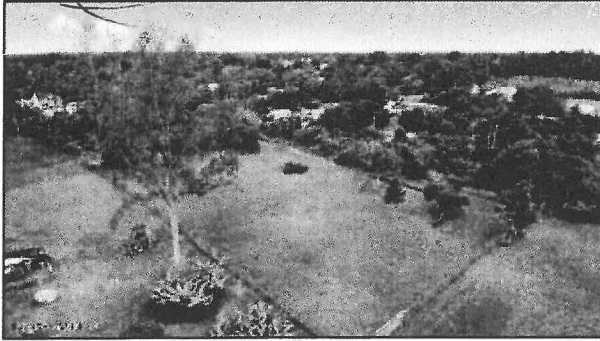
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4

909218 Closed Vacant Land

0000 Oakfield Ave SE, Palm Bay, FL 32909

LP:\$64,900 SP:\$58,000



Area: 343 - SE Palm Bay
County: Brevard
Sub Type: Residential
General: South
Subdivision/Condo Name: MELBOURNE PINES
County Sub/Condo Name: MELBOURNE PINES
Measurements From: Tax Rolls
Lot Dimensions:
Acreage: 0.69
List Price/Acres: \$94,057.97
Waterfront: No
Waterfront Type:
Water Frontage Ft:
Zoning:
Lot SqFt: 30,056
Sale Option:
of Lots:
Road Frontage Ft:
Unit #:
Close Date: 10/01/2021
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT
Sold-As-Is: Yes

Narrative: Vacant land to make your own! This property is cleared and ready for a new home, or just some land to call your own! The home with 1.71 acres across the street is also for sale with the same owners. They used the land to walk their horse and just have some extra space.

Directions: From I-95 exit East onto Malabar Rd, turn right on Babcock St, turn right on Agnes Ave, turn right on Rosa Ave, destination will be on the right.

FEATURES

Land Use: Single Family
Site Description: Cleared; Fenced
Lot Description: Dead End Street; Paved Street; West of US1
Utilities:

no water
no sewer

Water Amenities:

Frontage Description: City Road

Association Fee Incl:

Common Amenities: Private Storage

Possession: Closing

Current Adjacent Use: Residential; Vacant

Front Faces: S

Security/Safety:

Docs on File:

Possible Financing: Cash; Conventional

55+ Community: No

Gated Community: No

Showing:

Measurements From: Tax Rolls

Elementary School:

Middle School:

High School:

Legal Desc: MELBOURNE PINES ALL BLK 37

Tax Acct: 2931164

Tax ID: 29-37-09-75-00037.0-0000.00

Tax Year: 2020

Taxes: 160.02

Road Surface: Paved



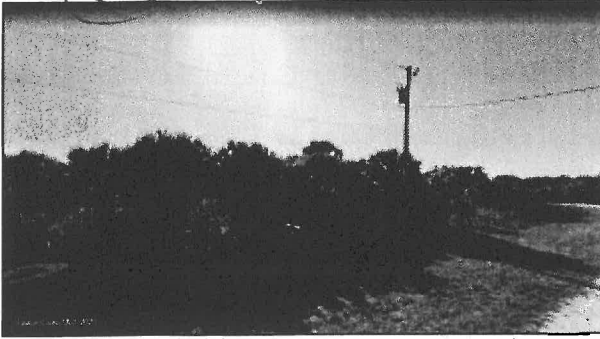
Presented by
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 321-544-4751
 jenny@gregellingson.com
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911553 Closed Vacant Land

3191 Metcalf Ave, Palm Bay, FL 32908

LP:\$32,500 SP:\$30,000



Area: 345 - SW Palm Bay
Sub Type: Residential
Subdivision/Condo Name: PORT MALABAR UNIT 49
County Sub/Condo Name: PORT MALABAR UNIT 49
Waterfront:
Waterfront Type:
Water Frontage Ft:
Zoning:
Sale Option:
Road Frontage Ft:
Close Date: 08/31/2021

County: Brevard
General County Loc: South
Measurements From:
Lot Dimensions:
Acreage: 0.55
List Price/Acres: \$59,090.91
Lot SqFt:
of Lots:
Unit #:
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT)
Sold-As-Is: Yes

Narrative: 2 lots for the price of one totaling over half an acre! The corner lot is .32 acres and the adjacent lot is .23 acres. Close to shopping and schools, perfect for building your custom dream home on the Space Coast. Both parcels included in sale, 29-36-35-KS-2541-1 and 29-36-35-KS-2541-2.

Directions: From Malabar Road, Go South on San Filippo Dr, Continue onto Degroodt, Turn left on St. Andre, Left on Metcalf, Lots are the last 2 on the left.

FEATURES

Land Use:

Site Description: Natural State

Lot Description: Many Trees; Wooded

Utilities: Adjacent to Site; Cable Available; Electricity Connected; Near Site; Telephone; Well Water

Water Amenities: Natural State

Frontage Description: City Road

Association Fee Incl:

Common Amenities:

Possession: Closing

Current Adjacent Use: Residential

Front Faces: W

Security/Safety:

Docs on File: Deed

Possible Financing: Cash; Conventional

55+ Community: No

Gated Community: No

Showing:

Measurements From:

Elementary School: Westside

Middle School: Southwest

High School: Bayside

Tax Acct: 2918908

Tax ID: 29-36-35-Ks-02541.0-0002.00
Road Surface: Dirt

Legal Desc: PORT MALABAR UNIT 49 LOT 1 & 2 BLK 2541

Tax Year: 2018

Taxes: 139.3



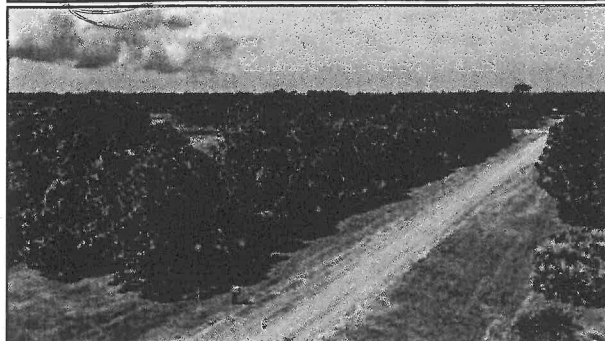
Presented by
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 jenny@gregellingson.com
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866687 Closed Vacant Land

6970 Hacienda Dr, Grant Valkaria, FL 32949

LP:\$45,000 SP:\$45,000



Area: 342 - Malabar/Grant-Valkaria
Sub Type: Residential
Subdivision/Condo Name: RIVERVIEW TERRACE
County Sub/Condo Name: RIVERVIEW TERRACE, AMENDED PLAT
Waterfront: No
Waterfront Type:
Water Frontage Ft:
Zoning:
Sale Option:
Road Frontage Ft: 230
Close Date: 06/11/2021

County: Brevard
General County Loc: South
Measurements Other From: 230' x 231' x 117' x 30' x 113' x 201'
Dimensions:
Acreage: 1.14
List Price/Acres: \$39,473.68
Lot SqFt: 49,658
of Lots: 1
Unit #:
Property Use: 00 / VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATT
Sold-As-Is: Yes

Narrative: BEAUTIFUL 1.14 ACRE LOT SITUATED IN HIGHLY DESIRABLE SUBDIVISION OF RIVERVIEW TERRACE. LOCATION IS IN CLOSE PROXIMITY TO THE SEBASTIAN RIVERFRONT DISTRICT. THE RIVERVIEW TERRACE COMMUNITY HAS A SERENE RUAL SETTING WITH PLENTY OF SPACE FOR WALKING AND BIKING. NO TIMEFRAME TO BUILD. ANNUAL HOA FEE IS ONLY \$75.00.

Directions: BREVARD: SOUTH ON US 1, RIGHT ON SHELL PIT, RIGHT ON OLD DIXIE HWY, LEFT ON BERRY ROAD, LEFT ON INDIAN RIVER BLVD, RIGHT ON HACIENDA. INDIAN RIVER: OVER THE US 1 BRIDGE TO SHELL PIT, FOLLOW ABOVE

FEATURES

Land Use: Single Family
Site Description: Natural State
Lot Description: Buildable; Irregular Lot; Paved Street; West of US1
Utilities: Cable Available; Electricity Connected; Telephone; Well Water

Water Amenities: Natural State
Frontage Description: City Road
Association Fee Incl: Common Area Maint; Common Taxes; Reserve Fund
Common Amenities:
Possession: Closing
Current Adjacent Use: Residential
Home Owners Assoc: Home Owners Mandatory
HOA Amt: 130
HOA Frequency: Yearly
HOA Info: HOA Amt: 130; HOA Frequency: Yearly

Front Faces: E
Security/Safety:
Docs on File: HOA - Condo Docs; Survey
Possible Financing: Cash; Conventional
55+ Community: No
Gated Community: No
Showing:
Measurements From: Other
Elementary School: Sunrise
Middle School: Stone
High School: Bayside

Svces not Prov.: Accepting Offers

Legal Desc: RIVERVIEW TERRACE, AMENDED PLAT LOT 98

Tax Acct: 3009470
Road Frontage Ft: 230

Tax ID: 30-38-04-79-00000.0-0098.00
Deed Restrictions: Yes
Road Surface: Paved

Tax Year: 2019
Free and Clear: Yes

Taxes: 503.43
HOA Amt: \$130 Yearly



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From: Christopher Little <Christopher.Little@palmbayflorida.org>
Sent: Monday, December 6, 2021 4:57 PM
To: Nancy Bunt <Nancy.Bunt@palmbayflorida.org>
Cc: Patrick Murphy <Patrick.Murphy@palmbayflorida.org>; Christopher Balter <Christopher.Balter@palmbayflorida.org>
Subject: RE: 1230 jacob

Findings

1. There are no short term plans to extend water/sewer lines at this location.
2. We would not support a variance to the minor subdivision requirements.
3. The construction cost range seems correct.

Solutions

1. Yes, buyer incurs the initial cost to install the pipe; however, buyer will be able to recover the installation costs as parcels adjacent to the installed water main connect as long as the connection is made within 7 years.

Christopher A. Little, PE
Utilities Director
City of Palm Bay
250 Osmosis Drive SE
Palm Bay, FL 32909
321.952.3410 (Office)
321.508.2105 (Mobile)

From: Christopher Balter <Christopher.Balter@palmbayflorida.org>
Sent: Monday, December 6, 2021 4:16 PM
To: Nancy Bunt <Nancy.Bunt@palmbayflorida.org>; Christopher Little <Christopher.Little@palmbayflorida.org>
Cc: Patrick Murphy <Patrick.Murphy@palmbayflorida.org>
Subject: RE: 1230 jacob

In regards to the zoning change in the email, the code is very specific for minor subdivisions.
(A) Minor subdivisions. Division of such parcels into no more than ten (10) lots, that comply with the following criteria, shall be considered a minor subdivision and shall be administratively reviewed in two (2) stages: 1) preliminary plat review; and 2) construction plan and final plat review. A minor subdivision may be approved for a division of land if the following conditions are met:

- (1) All proposed lots are for detached single family residential lots.
- (2) Any proposed street may not exceed one thousand three hundred twenty (1,320) feet in total length and the new street shall directly connect to an existing public or privately maintained right-of-way.
- (3) All lots being created shall have fee simple access on a public or privately maintained street.

(4) All lots shall meet the minimum lot frontage area and dimensional requirements for the zoning district in which they are located.

(5) The subdivision shall be all inclusive and shall not consist of more than one (1) phase of development.

(B) Re-plats or subdivisions that do not require the creation of new streets or right-of-way and are not located within a Special Flood Hazard Area may be reviewed under an application for final plat review and approval. A lot grading plan, drainage plan, and wetlands delineation, if applicable, shall be included with the final plat for review.

(C) Exemptions. The following are exempt from the subdivision platting process subject to conformance to all other land development regulations, including but not limited to, lot design and lot drainage requirements of the Land Development Code.

(1) The division of one (1) parcel or lot into no more than two (2) lots, where both of the proposed lots meet the minimum frontage requirements abutting a public or privately maintained road and there is no change in street lines or easements.

(D) Provision of water and sewer. A minor subdivision may be developed under the following parameters:

(1) Parcels with city water available to them, meaning existing water lines running along the parcel's frontage or across the street that the parcel has frontage upon, may be exempt from providing city sewer if existing sewer lines are not located within one-quarter ($\frac{1}{4}$) mile of the parcel. This distance shall be measured using existing road right-of-ways. For such a parcel of land, the lots in the minor subdivision shall be a minimum of one-half ($\frac{1}{2}$) acre in size. The subdivision must connect to the city water system.

(2) Parcels with city water available to them, and existing sewer lines located within one-quarter ($\frac{1}{4}$) mile of the parcel, must provide sewer to each lot, regardless of the size of the lots in the subdivision. The subdivision must connect to the city water system.

(3) Parcels located within areas that do not have either water or sewer lines available to them shall be required to provide both water and sewer to the subdivision, unless each lot is a minimum of one (1) acre in size. If both water and sewer are brought to the site, then the minimum lot size shall be consistent with what is provided for in the applicable Zoning District.

Christopher Balter

Christopher Balter

Senior Planner

City of Palm Bay

Land Development Division

P: 321-733-3042

F: 321-953-8920



U.S. Fish and Wildlife Service

National Wetlands Inventory

Jacob Street Subdivision



November 4, 2021

Wetlands

	Estuarine and Marine Deepwater		Freshwater Emergent Wetland		Lake
	Estuarine and Marine Wetland		Freshwater Forested/Shrub Wetland		Other
			Freshwater Pond		Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nelson Moya, Chief of Police

DATE: 1/6/2022

RE: Consideration of accepting the Community Development Block Grant - Mitigation Critical Facility Hardening Program grant awards for the Police Main Station (Matching HMGP Funding/Replacement Generator) and the Police Substation (Replacement Generator/Hurricane Shutters).

The City of Palm Bay Police Department has been awarded two grants for Critical Facility Hardening Program (CFHP) under Community Development Block Grant - Mitigation (CDBG-MIT) for the Police Main Station on Malabar Road and Police Substation on Main Street, respectively.

The CDBG-MIT CFHP award for the City's primary Police Station/Headquarters located at 130 Malabar Rd SE seeks to replace the over 30-year-old generator for the facility. During this process, the generator will be installed within a new enclosure located further away from the building. This relocation will reduce the fumes occurring within the Communications Center during the regular testing and operational periods which has historically been a concern. Additionally, the CFHP award for the primary Police Station includes matching funds (\$224,473) for the previously awarded FEMA Hazard Mitigation Grant Program (HMGP) project of a complete roof replacement and automated hurricane shutters. The remaining \$379,778 of this award will be allocated to the relocation and replacement of the generator. The total anticipated award for the Police Station/Headquarters agreement is \$604,251.

Additionally, the CDBG-MIT CFHP award for the Police Substation located at 1575 Main St NE encompasses the installation of a replacement generator and permanent roll down hurricane shutters on all windows and entrances. The total anticipated award for the Police Substation agreement is \$80,187.

REQUESTING DEPARTMENT:

Police Department

FISCAL IMPACT:

The fiscal impact is a revenue of up to \$684,438 in General Fund Account #301-0000-334-5006 during the City of Palm Bay's FY2022 for the reimbursement of project expenditures in the Police Community Investment Fund Account# 301-5090-521-62-01.

RECOMMENDATION:

Motion to approve DEO Agreement No: I0147 – City of Palm Bay MIT Agreement – Main Station (Malabar) and DEO Agreement No: I1048 – City of Palm Bay MIT Agreement – Substation award agreements, and authorize the City Manager to execute the initial agreement and any future grant modifications under these awards.

ATTACHMENTS:

Description

- 1) DEO Agreement No: I0147 – City of Palm Bay MIT Agreement – Main Station
- 2) DEO Agreement No: I0148 – City of Palm Bay MIT Agreement – Substation

State of Florida
Department of Economic Opportunity

Federally Funded
Community Development Block Grant
Mitigation Program (CDBG-MIT)
Subrecipient Agreement

THIS SUBRECIPIENT AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, (hereinafter referred to as “DEO”) and the City of Palm Bay, Florida (hereinafter referred to as the “Subrecipient” (each individually a “Party” and collectively “the Parties”).

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, pursuant to Public Law (P.L.) P.L. 115-123 Bipartisan Budget Act of 2018 and Additional Supplemental Appropriations for Disaster Relief Act 2018 (approved February 9, 2018), and P.L. 116-20 Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (approved June 6, 2019), Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-56, the “Continuing Appropriations Act, 2018” ; and the requirements of the Federal Register (FR) notices entitled “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees”, 84 FR 45838 (August 30, 2019) and “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees” (CDBG Mitigation) 86 FR 561 (January 6, 2021);(hereinafter collectively referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded Community Development Block Grant–Mitigation (CDBG-MIT) funds to DEO for mitigation activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA) (42 United States Code (U.S.C.) § 5301 *et seq.*) and applicable implementing regulations at 24 C.F.R. part 570 and consistent with the Appropriations Act.

WHEREAS, CDBG-MIT funds made available for use by the Subrecipient under this Agreement constitute a subaward of the DEO Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of DEO’s Federal award.

WHEREAS, the Subrecipient has legal authority to enter into this Agreement and by signing this Agreement, the Subrecipient represents and warrants to DEO that it will comply with all the requirements of the subaward described herein.

WHEREAS, all CDBG-MIT activities carried out by the Subrecipient will: (1) meet the definition of mitigation activities. For the purpose of this funding, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters; (2) address the current and future risks as identified in DEO’s Mitigation Needs Assessment of most impacted and distressed area(s); (3) be CDBG-eligible activities under the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and a Covered Project.

NOW THEREFORE, DEO and the Subrecipient agree to the following:

(1) SCOPE OF WORK

The Scope of Work for this Agreement includes Attachment A, Project Description and Deliverables. With respect to Attachment B, Project Budget, and Attachment C, Activity Work Plan, the Subrecipient shall submit to DEO such Attachments in conformity with the current examples attached hereto as necessary and appropriate. Provided further, if there is a disagreement between the Parties, with respect to the formatting and contents of such attachments, then DEO's decisions with respect to same shall prevail, at DEO's sole and absolute discretion.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

Subrecipient has diligently reviewed this Agreement and is a sophisticated organization having experience managing projects with funds made available through federal grants. Subrecipient is familiar with DEO's grant agreement with HUD, has reviewed applicable CDBG-MIT regulations and guidelines, will conduct, and will ensure its activities are in compliance with DEO's grant agreement with HUD and all applicable CDBG-MIT regulations and guidelines. Subrecipient agrees to abide by all applicable State and Federal laws, rules and regulations as now in effect and as may be amended from time to time, including but not limited to, the Federal laws and regulations set forth in 24 CFR Part 570, applicable Federal Register Notices, the State's Action Plan, and all applicable CDBG-MIT regulations and guidelines.

Subrecipient shall ensure that all its activities under this Contract shall be conducted in conformance with these provisions, as applicable: 45 CFR Part 75, 29 CFR Part 95, 2 CFR Part 200, 20 CFR Part 601, 24 CFR Part 570 subpart I, *et seq.*, and all other applicable federal laws, regulations, and policies governing the funds provided under this Agreement as now in effect and as may be amended from time to time.

(3) PERIOD OF AGREEMENT

This Agreement is effective as of the date DEO executes this Agreement (the "Effective Date") and ends forty-eight (48) months after execution by DEO, unless otherwise terminated as set forth herein.

(4) RENEWAL AND EXTENSION

This Agreement shall not be renewed. DEO shall not grant any extension of this Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion and DEO's Director of the Division of Community Development approves such extension in writing

(5) MODIFICATION OF AGREEMENT

Modifications to this Agreement shall be valid only when executed in writing by the Parties. Any modification request by the Subrecipient constitutes a request to negotiate the terms of this Agreement. DEO may accept or reject any proposed modification based on DEO's sole determination and absolute discretion, that any such acceptance or rejection is in the State's best interest.

(6) RECORDS

(a) The Subrecipient's performance under this Agreement shall be subject to 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as now in effect and as may be amended from time to time.

(b) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and representatives of the Federal government and their duly authorized representatives shall have access to any of the Subrecipient's books, documents, papers and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) The Subrecipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) The Subrecipient will provide to DEO all necessary and appropriate financial and compliance audits in accordance with Paragraph (7), Audit Requirements and Attachments I and J herein and ensure that all related party transactions are disclosed to the auditor.

(e) The Subrecipient shall retain sufficient records to show its compliance with the terms of this Agreement and the compliance of all subrecipients, contractors, subcontractors and consultants paid from funds under this Agreement for a period of six (6) years from the date DEO issues the final closeout for this award. The Subrecipient shall also comply with the provisions of 24 CFR 570.493 and 24 CFR 570.502(a)(7)(ii). The Subrecipient shall further ensure that audit working papers are available upon request for a period of six (6) years from the date DEO issues the final closeout of this Agreement, unless extended in writing by DEO. The six-year period may be extended for the following reasons:

1. Litigation, claim or audit initiated before the six-year period expires or extends beyond the six-year period, in which case the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
2. Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for six (6) years after final disposition.
3. Records relating to real property acquired shall be retained for six (6) years after the closing on the transfer of title.

(f) The Subrecipient shall maintain all records and supporting documentation for the Subrecipient and for all contractors, subcontractors and consultants paid from funds provided under this Agreement, including documentation of all program costs in a form sufficient to determine compliance with the requirements and objectives of the scope of work and all other applicable laws and regulations.

(g) The Subrecipient shall either (i) maintain all funds provided under this Agreement in a separate bank account or (ii) ensure that the Subrecipient's accounting system shall have sufficient internal controls to separately track the expenditure of all funds from this Agreement. Provided further, that the only option available for advanced funds is to maintain such advanced funds in a separate bank account. There shall be no commingling of funds provided under this Agreement with any other funds, projects or programs. DEO may, in its sole discretion, disallow costs made with commingled funds and require reimbursement for such costs as described herein, Subparagraph (22)(e), Repayments.

(h) The Subrecipient, including all of its employees or agents, contractors, subcontractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the Federal government or their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(7) AUDIT REQUIREMENTS

(a) The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 CFR part 200 if it expends seven hundred fifty thousand dollars (\$750,000) or more in Federal awards from all sources during its fiscal year.

(b) Within sixty (60) calendar days of the close of Subrecipient's fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to audit@deo.myflorida.com, and DEO's grant manager; a blank version of which is attached hereto as Attachment J. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Subrecipient.

(c) In addition to the submission requirements listed in Attachment I, Audit Requirements, the Subrecipient shall send an electronic copy of its audit report to DEO's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open CDBG-MIT subgrant.

(d) Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 C.F.R 200.512, when such provisions are applicable to this Agreement.

(8) REPORTS

Subrecipient shall provide DEO with all reports and information set forth in Attachment G, Reports. The monthly reports and administrative closeout reports must include the current status and progress of Subrecipient and all subcontractors in completing the work described in Attachment A, Scope of Work, and the expenditure of funds under this Agreement. Within 10 calendar days of a request by DEO, Subrecipient shall provide additional program updates or information. Without limiting any other remedy available to DEO, if all required reports and copies are not sent to DEO or are not completed in a manner acceptable to DEO, payments may be withheld until the reports are completed to DEO's satisfaction. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(9) INSPECTIONS AND MONITORING

(a) Subrecipient shall cooperate and comply with DEO, HUD, and auditors with any inspections and will immediately provide access to records and financial statements as deemed necessary by DEO, HUD, and their respective auditors at least in accordance with requirements of 2 CFR part 200 and 24 CFR 570.489.

(b) Subrecipient shall cooperate and comply with monitoring of its activities as deemed necessary by DEO to ensure that the subaward is used for authorized purposes in compliance with federal statutes, regulations, and this Agreement.

(c) Without limiting the actions DEO, HUD, or their respective investigators may take, monitoring procedures will include at a minimum: (1) reviewing financial and performance reports required by DEO; (2) following-up and ensuring Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from DEO as detected through audits, on-site reviews and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to Subrecipient from DEO as required by 2 CFR §200.521.

(d) Corrective Actions: DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from the pass-through entity as detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, DEO may in its sole discretion and without advance notice, impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(10) DUPLICATION OF BENEFITS

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 *et seq.*) and described in Appropriations Acts. Subrecipient must comply with HUD's requirements for duplication of benefits, as described in the Federal Register and HUD guidance (including HUD training materials). Subrecipient shall carry out the activities under this Agreement in compliance with DEO's procedures to prevent duplication of benefits. Subrecipient shall sign a Subrogation Agreement (See Attachment M).

(11) LIABILITY

(a) If Subrecipient is a state agency or subdivision, as defined in Section 768.28(2), F.S., pursuant to Section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) Subrecipient assumes sole responsibility for the training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, Florida Statutes.

Subrecipient shall hold DEO harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. For purposes of this Agreement, Subrecipient agrees that it is not an employee or agent of DEO but is an independent contractor.

(c) Subrecipient agrees to be fully responsible for its negligent or tortious acts or omissions, which result in claims or suits against DEO. Subrecipient agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by DEO to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(d) Nothing herein is intended to serve as a waiver of sovereign immunity by DEO or the Subrecipient.

(12) EVENTS OF DEFAULT

If any of the following events occur ("Events of Default"), DEO may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies available through this Agreement or pursue any remedy at law or in equity, without limitation:

(a) Any warranty or representation made by Subrecipient, in this Agreement or any previous agreement with DEO, is or becomes false or misleading in any respect, or if Subrecipient fails to keep or perform any of the obligations, terms, or covenants in this Agreement or any previous agreement with DEO or HUD, and/or has not cured them in timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

(b) Any material adverse change occurs in the financial condition of Subrecipient at any time during the term of this Agreement and the Subrecipient fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by DEO;

(c) If Subrecipient fails to submit any required report or submits any required report with incorrect, incomplete, or insufficient information or fails to submit additional information as requested by DEO;

(d) If Subrecipient fails to perform or timely complete any of its obligations under this Agreement, including participating in DEO's Implementation Workshop. The Parties agree that in the event DEO elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise any remedies allowable herein or at law and without becoming liable to make any further payment.

(e) Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay the Subrecipient believes is excusable under this paragraph, Subrecipient shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Subrecipient could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Subrecipient of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against DEO. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist,

Subrecipient shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Subrecipient, provided that Subrecipient grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Subrecipient for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

(13) REMEDIES

If an Event of Default occurs, DEO may in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the Subrecipient and if the Subrecipient fails to cure within those thirty (30) calendar days DEO may choose to exercise one or more of the following remedies, either concurrently or consecutively:

- (a) Terminate this Agreement upon written notice by DEO sent in conformity with Paragraph (17) Notice and Contact;
- (b) Begin any appropriate legal or equitable action to enforce performance of this Agreement;
- (c) Withhold or suspend payment of all or any part of a request for payment;
- (d) Demand Subrecipient return to DEO any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
- (e) Exercise any corrective or remedial actions, including but not limited to:
 - 1. Request additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance;
 - 2. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
 - 3. Advise the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question.
- (f) Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude DEO from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by DEO to require strict performance does not affect, extend or waive any other right or remedy available or affect the later exercise of the same right or remedy by DEO for any other default by the Subrecipient.

(14) DISPUTE RESOLUTION

DEO shall decide disputes concerning the performance of the Agreement, and document dispute decisions in writing and serve a copy of same to Subrecipient. All decisions are final and conclusive unless the Subrecipient files a petition for administrative hearing with DEO within twenty-one (21) days from the date of receipt of the decision. Exhaustion of administrative remedies prescribed in Chapter 120, F.S., is an absolute condition precedent to Subrecipient's ability to pursue any other form of dispute resolution; provided however, that the Parties may mutually agree to employ the alternative dispute resolution procedures outlined in Chapter 120, F.S.

(15) CITIZEN COMPLAINTS

The goal of DEO is to provide an opportunity to resolve complaints in a timely manner, usually within fifteen (15) business days of the receipt of the complaint as expected by HUD, if practicable, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

Applicants are allowed to appeal program decisions related to one of the following activities:

- (a) A program eligibility determination,
- (b) A program assistance award calculation, or
- (c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Long-Term Resiliency email at CDBG-DR@deo.myflorida.com or submit by postal mail to the following address:

Attention: Office of Long-Term Resiliency
Florida Department of Economic Opportunity
107 East Madison Street
The Caldwell Building, MSC 400
Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:

- (a) Investigations as necessary,
- (b) Resolution, and
- (c) Follow-up actions.

If the complainant is not satisfied by Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to DEO at:

Department of Economic Opportunity
Caldwell Building, MSC-400
107 E Madison Street
Tallahassee, FL 32399

The Florida Office of Long-Term Resiliency operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or www.hud.gov/fairhousing.

(16) TERMINATION

(a) DEO may immediately suspend or terminate this Agreement for cause by providing written notice, from the date notice is sent by DEO. Cause includes, but is not limited to: an Event of Default as set forth in this Agreement; Subrecipient's improper or ineffective use of funds provided under this Agreement; fraud; lack of compliance with any applicable rules, regulations, statutes, executive orders, HUD guidelines, policies, directives or laws; failure, for any reason, to timely and/or properly perform any of the Subrecipient's obligations under this Agreement; submission of reports that are incorrect or incomplete in any material respect and refusal to permit public access to any document, paper, letter or other material subject to disclosure under law, including Chapter 119, F.S., as amended. The aforementioned reasons for termination are listed in the immediately preceding sentence for illustration purposes but are not limiting DEO's sole and absolute discretion with respect to DEO's right to terminate this Agreement. In the event of suspension or termination, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs.

(b) DEO may unilaterally terminate this Agreement, in whole or in part, for convenience by providing Subrecipient fourteen (14) days written notice from the date notice is sent by DEO, setting forth the reasons

for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, DEO determines that the remaining portion of the award will not accomplish the purpose for which the award was made, DEO may terminate the portion of the award which will not accomplish the purpose for which the award was made. Subrecipient shall continue to perform any work not terminated. In the event of termination for convenience, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs for the terminated portion of work.

(c) The Parties may terminate this Agreement for their mutual convenience in writing, in the manner agreed upon by the Parties, which must include the effective date of the termination.

(d) In the event that this Agreement is terminated, Subrecipient shall not incur new obligations under the terminated portion of the Agreement after the date Subrecipient has received the notification of termination. Subrecipient shall cancel as many outstanding obligations as possible. DEO shall disallow all costs incurred after Subrecipient's receipt of the termination notice. DEO may, to the extent authorized by law, withhold payments to Subrecipient for the purpose of set-off until the exact amount of damages due to DEO from Subrecipient is determined.

(e) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-MIT funds.

(f) Any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must either:

1. Be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein; or
2. If not used to meet a national objective, Subrecipient shall pay to DEO an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-MIT funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

(g) The rights and remedies under this clause are in addition to any other rights or remedies provided by law or under this Agreement.

(17) NOTICE AND CONTACT

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, first class or certified mail with return receipt requested, email with confirmation of receipt of email from Subrecipient, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of DEO's Grant Manager for this Agreement is:

Paul Wotherspoon
 107 E Madison Street, Caldwell Building
 Tallahassee, Florida 32399
 850-717-8502
 Paul.wotherspoon@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Nicholas Zynko
 130 Malabar Road SE
 Palm Bay, Florida 32907
 321-292-9001
 Nicholas.zynko@palmbayflorida.org

(d) If different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as provided for in this Agreement. Such change shall not require a formal amendment of the Agreement.

(18) CONTRACTS

If the Subrecipient contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the DEO grant manager for prior written approval. For each contract, the Subrecipient shall report to DEO as to whether that contractor or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, F.S. The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 and §200.330 when procuring property and services under this Agreement (refer to Attachments D & E).

The Subrecipient shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

- (a) the period of performance or date of completion;
- (b) the performance requirements;
- (c) that the contractor is bound by the terms of this Agreement;
- (d) that the contractor is bound by all applicable State and Federal laws, rules, and regulations;
- (e) that the contractor shall hold DEO and Subrecipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
- (f) the obligation of the Subrecipient to document in Subrecipient's reports the contractor's progress in performing its work under this Agreement;
- (g) the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards – (refer to Attachment L)

Subrecipient must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.489(l)), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

Subrecipient shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

(19) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous understandings. No waiver by DEO may be effective unless made in writing by an authorized DEO official.

(20) ATTACHMENTS

- (a) If any inconsistencies or conflict between the language of this Agreement and the attachments arise, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- (b) This Agreement contains the following attachments:
 - Attachment A – Project Description and Deliverables
 - Attachment B – Project Budget (Example)
 - Attachment C – Activity Work Plan (Example)
 - Attachment D – Program and Special Conditions
 - Attachment E – State and Federal Statutes, Regulations and Policies
 - Attachment F – Civil Rights Compliance
 - Attachment G – Reports

Attachment H – Warranties and Representations

Attachment I – Audit Requirements and Exhibit 1 to Attachment I – Funding Sources

Attachment J – Audit Compliance Certification

Attachment K – SERA Access Authorization Form (form provided after execution of this agreement)

Attachment L - 2 CFR Appendix II to Part 200

Attachment M – Subrogation Agreement

(21) FUNDING/CONSIDERATION

(a) The funding for this Agreement shall not exceed Six Hundred Four Thousand Two Hundred Fifty-One Dollars and Zero Cents (\$604,251.00) subject to the availability of funds. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon annual appropriations by the Legislature and subject to any modification in accordance with Chapter 216, F.S. or the Florida Constitution.

(b) DEO will provide funds to Subrecipient by issuing a Notice of Subgrant Award/Fund Availability ("NFA") through DEO's financial management information system. Each NFA may contain specific terms, conditions, assurances, restrictions or other instructions applicable to the funds provided by the NFA. By accepting funds made available through an NFA, Subrecipient agrees to comply with all terms, conditions, assurances, restrictions or other instructions listed in the NFA.

(c) By execution of this Agreement, Subrecipient certifies that necessary written administrative procedures, processes and fiscal controls are in place for the operation of its CDBG-MIT program for which Subrecipient receives funding from DEO. These written administrative procedures, processes and fiscal controls must, at minimum, comply with applicable state and federal law, rules, regulations, guidance and the terms of this Agreement. Subrecipient agrees to comply with all the terms and conditions of Attachment D, Program and Special Conditions.

(d) Subrecipient shall expend funds only for allowable costs and eligible activities, in accordance with the Scope of Work.

(e) Subrecipient shall request all funds in the manner prescribed by DEO. The authorized signatory for the Subrecipient set forth on the SERA Access Authorization Form must approve the submission of each Request for Funds ("RFF") on behalf of Subrecipient. SERA Access Authorization Form will be provided after the execution of this Agreement.

(f) Except as set forth herein, or unless otherwise authorized in writing by DEO, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for funding with CDBG-MIT funds.

(g) If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the Florida Legislature, the State Chief Financial Officer or under Subparagraph (23), Mandated Conditions of this Agreement, all obligations on the part of DEO to make any further payment of funds will terminate and the Subrecipient shall submit its administrative closeout report and subgrant agreement closeout package as directed by DEO within thirty (30) calendar days from receipt of notice from DEO.

(h) Subrecipient is ultimately responsible for the administration of this Agreement, including monitoring and oversight of any person or entity retained or hired by Subrecipient.

(i) All expenditures under this Agreement shall be made in accordance with this Agreement and any applicable state or federal statutes, rules, or regulations.

(j) Funding for this Agreement is appropriated under Public Law 115-254, Division I, the "Supplemental Appropriations for Disaster Relief Act, 2018" and Public Law 116-20, the "Additional Supplemental Appropriations for Disaster Relief Act, 2019" for the purpose of assisting in long-term recovery from major disasters that occurred in 2017, 2018, and 2019 in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., (the "Stafford Act").

(k) CDBG-DR funds, appropriated and identified by Public Law, are governed by one or more Federal Register notices that contain requirements, applicable waivers, and alternative requirements that apply to the use of these funds.

(22) REPAYMENTS

(a) Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. Subrecipient shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.

(b) In accordance with Section 215.971, F.S., Subrecipient shall refund to DEO any unobligated funds which have been advanced or paid.

(c) Subrecipient shall refund to DEO any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors or consultants are entitled under the terms and conditions of this Agreement.

(d) Subrecipient shall refund to DEO any funds received for an activity if the activity does not meet one of the three National Objectives listed in 24 CFR § 570.483(b), (c) and (d); provided, however, the Subrecipient is not required to repay funds for subgrant administration unless DEO, in its sole discretion, determines Subrecipient is at fault for the ineligibility of the activity in question.

(e) Subrecipient shall refund to DEO any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to DEO, by the Subrecipient, within thirty (30) calendar days from Subrecipient's receipt of notification of such non-compliance.

(f) In accordance with Section 215.34(2), F.S., if a check or other draft is returned to DEO for collection, the Subrecipient shall pay to DEO a service fee of \$15.00 or five percent of the face amount of the returned check or draft, whichever is greater. All refunds or repayments to be made to DEO under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to DEO at the following address:

Department of Economic Opportunity
Community Development Block Grant Programs Cashier
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

(23) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a DEO request or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations and materials are incorporated herein by reference.

(b) This Agreement shall be construed under the laws of the State of Florida and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. The Parties explicitly waive any right to jury trial.

(c) If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

(d) Any power of approval or disapproval granted to DEO under the terms of this Agreement shall survive the term of this Agreement.

(e) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(f) Subrecipient shall comply with all applicable local, state and federal laws, including the Americans With Disabilities Act of 1990, as amended; the Florida Civil Rights Act, as amended, Chapter 760, Florida Statutes; Title VII of the Civil Rights Act of 1964, as amended; (P.L. 101-336, 42 U.S.C. § 12101 *et seq.*) and laws which prohibit discrimination by public and private entities on in employment, public accommodations, transportation, state and local government services and telecommunications.

(g) Pursuant to Section 287.133(2)(a), F.S., a person or affiliate, as defined in Section 287.133(1), F.S., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or

public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the convicted vendor list.

(h) Pursuant to Section 287.134(2)(a), F.S., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the discriminatory vendor list.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(j) In the event travel is pre-approved by DEO, any bills for travel expenses shall be submitted and reimbursed in accordance with Section 112.061, F.S., the rules promulgated thereunder and 2 CFR § 200.474.

(k) If Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to DEO or be applied against DEO's obligation to pay the Agreement award amount.

(l) Subrecipient acknowledges being subject to Florida's Government in the Sunshine Law (Section 286.011, F.S.) with respect to the meetings of Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. Subrecipient agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

(m) Subrecipient shall comply with section 519 of P. L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(n) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-MIT funds.

(24) LOBBYING PROHIBITION

(a) No funds or other resources received from DEO under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Subrecipient certifies, by its signature to this Agreement, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 general 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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. Subrecipient shall require that 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 as described in this Agreement. 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 ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

(25) COPYRIGHT, PATENT AND TRADEMARK

Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by Subrecipient to the State of Florida.

(a) If the Subrecipient has a pre-existing patent or copyright, Subrecipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, Subrecipient shall refer the discovery or invention to DEO for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films or other copyrightable material are produced, Subrecipient shall notify DEO. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Subrecipient to the State of Florida.

(c) Within thirty (30) calendar days of execution of this Agreement, Subrecipient shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. Subrecipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and DEO shall have the right to all patents and copyrights which accrue during performance of this Agreement.

(26) LEGAL AUTHORIZATION

(a) Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. Subrecipient certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement. DEO may, at its discretion, request documentation evidencing the undersigned has authority to bind Subrecipient to this Agreement as of the date of execution; any such documentation is incorporated herein by reference.

(b) Prior to the execution of this Agreement, Subrecipient warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit, restrain or diminish Subrecipient's ability to satisfy its obligations. Subrecipient shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of this Agreement.

(27) PUBLIC RECORD RESPONSIBILITIES

(a) In addition to Subrecipient's responsibility to directly respond to each request it receives for records, in conjunction with this Agreement and to provide the applicable public records in response to such request,

Subrecipient shall notify DEO of the receipt and content of all such requests by sending an email to PRRequest@deo.myflorida.com within one (1) business day from receipt of the request.

(b) Subrecipient shall keep and maintain public records required by DEO to perform the Subrecipient's responsibilities hereunder. Subrecipient shall, upon request from DEO's custodian of public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, F.S., or as otherwise provided by law. Subrecipient shall allow public access to all documents, papers, letters or other materials made or received by the Subrecipient in conjunction with this Agreement, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and Section 119.07(1), F.S. For records made or received by Subrecipient in conjunction with this Agreement, Subrecipient shall respond to requests to inspect or copy such records in accordance with Chapter 119, F.S. For all such requests for records that are public records, as public records are defined in Section 119.011, F.S., Subrecipient shall be responsible for providing such public records per the cost structure provided in Chapter 119, F.S., and in accordance with all other requirements of Chapter 119, F.S., or as otherwise provided by law.

(c) This Agreement may be terminated by DEO for refusal by Subrecipient to comply with Florida's public records laws or to allow public access to any public record made or received by the Subrecipient in conjunction with this Agreement.

(d) If, for purposes of this Agreement, Subrecipient is a "contractor" as defined in Section 119.0701(1)(a), F.S. ("Subrecipient-contractor"), the Subrecipient-contractor shall transfer to DEO, at no cost to DEO, all public records upon completion including termination, of this Agreement or keep and maintain public records required by DEO to perform the service. If Subrecipient-contractor transfers all public records to the public agency upon completion of this Agreement, Subrecipient-contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Subrecipient-contractor keeps and maintains public records upon completion of the Agreement, the Subrecipient-contractor shall meet all applicable requirements for retaining public records in accordance with Chapters 119 and 257, F.S. All records stored electronically must be provided to DEO, upon request from DEO's custodian of public records, in a format that is compatible with the information technology systems of DEO.

(e) If DEO does not possess a record requested through a public records request, DEO shall notify Subrecipient-contractor of the request as soon as practicable, and the Subrecipient-contractor must provide the records to DEO or allow the records to be inspected or copied within a reasonable time, but in all cases within fourteen business days. If the Subrecipient-contractor does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. Subrecipient-contractor who fails to provide public records to DEO within a reasonable time may be subject to penalties under Section 119.10, F.S.

(f) Subrecipient shall notify DEO verbally within twenty-four (24) hours and in writing within seventy-two (72) hours if any data in the Subrecipient's possession related to this Agreement is subpoenaed or improperly used, copied or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Subrecipient shall cooperate with DEO, in taking all steps as DEO deems advisable, to prevent misuse, regain possession or otherwise protect the State's rights and the data subject's privacy.

(g) Subrecipient acknowledges DEO is subject to the provisions of Chapter 119, F.S., relating to public records and that reports, invoices and other documents Subrecipient submits to DEO under this Agreement constitute public records under Florida Statutes. Subrecipient shall cooperate with DEO regarding DEO's efforts to comply with the requirements of Chapter 119, F.S.

(h) If Subrecipient submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Subrecipient prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of Chapter 119, F.S., prior to submittal of the record to DEO serves as the Subrecipient's waiver of a claim of exemption. Subrecipient shall ensure public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement if the Subrecipient-contractor does not transfer the records to DEO upon completion, including termination, of this Agreement.

(i) IF SUBRECIPIENT-CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT-CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via email at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

(j) To the extent allowable by law, Subrecipient shall be fully liable for the actions of its agents, employees, partners, contractors and subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Subrecipient, its agents, employees, partners, contractors or subcontractors, provided, however, Subrecipient does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but not the obligation, to enforce this indemnification provision.

(k) DEO does not endorse any Subrecipient, commodity, or service. Subject to Chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Subrecipient's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any other entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives or subcontractors with the professional skills necessary to perform the work services required by the Agreement.

(l) Subrecipient shall comply with the requirements set forth in Section 119.0701, F.S., when entering into any public agency contract for services after the Effective Date of this Agreement. Subrecipient shall amend each of the Subrecipient's public agency contracts for services already in effect as of the Effective Date of this Agreement and which contract will or may be funded in whole or in part with any public funds. DEO may terminate this Agreement if the Subrecipient does not comply with this provision.

(28) EMPLOYMENT ELIGIBILITY VERIFICATION

(a) Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

(b) E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:

<https://www.e-verify.gov/>

(c) If the Recipient does not use E-Verify, the Recipient shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

(29) PROGRAM INCOME

(a) The Subrecipient shall report to DEO all program income (as defined at 24 CFR § 570.500(a) or in the Federal Register Guidance governing the CDBG-MIT funds) generated by activities carried out with CDBG-MIT funds made available under this Agreement as part of the Subrecipient's Quarterly Progress Report. The Subrecipient shall use program income in accordance with the applicable requirements of 2 CFR part 200, 24 CFR part 570.489, 570.500, 570.504 and the terms of this Agreement.

(b) Program income generated after closeout shall be returned to DEO. Program income generated prior to closeout shall be returned to DEO unless the program income is used to fund additional units of CDBG-MIT activities, specified in a modification to this Agreement and duly executed prior to administrative closeout.

(30) NATIONAL OBJECTIVES

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this Agreement shall meet the following national objectives and satisfy the following criteria:

- (a) Benefit low and moderate income;
- (b) Meet a particularly urgent need;
- (c) Aid in the prevention or elimination of slums or blight.

(31) INDEPENDENT CONTRACTOR

(a) In Subrecipient's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed Subrecipient is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to or shall be deemed to constitute an employer/employee relationship, partnership or joint venture between the Parties. Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Nothing in this Agreement shall be construed to create any agency or employment relationship between DEO Subrecipient, its employees, subcontractors or agents. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

(b) Subrecipient, its officers, agents, employees, subcontractors or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, agent, joint venturer, or partner of the State of Florida.

(c) Subrecipient shall have sole right to control the manner, method and means by which the services required by this Agreement are performed. DEO shall not be responsible to hire, supervise or pay Subrecipient's employees. Neither Subrecipient, nor its officers, agents, employees, subcontractors or assignees are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.

(d) Subrecipient agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, servant, joint venturer or partner of the State of Florida.

(e) Unless justified by the Subrecipient, and agreed to by DEO in the Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial or clerical support) to the Subrecipient or its subcontractor or assignee.

(f) DEO shall not be responsible for withholding taxes with respect to the Subrecipient's use of funds under this Agreement. Subrecipient shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits or employee benefits of any kind. Subrecipient shall ensure that its employees, subcontractors and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

(g) Subrecipient, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

(h) DEO shall not be responsible the provision of any training to Subrecipient, its employees, assigns, agents, representatives or subcontractors in the professional skills necessary to perform the work services required by this Agreement; DEO may provide training in the form of an Implementation Workshop in keeping with implementation

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State of Florida
 Department of Economic Opportunity
 Federally Funded Subrecipient Agreement
 Signature Page

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and, in the attachments and exhibits hereto, the Parties executed this Agreement by their duly authorized undersigned officials.

CITY OF PALM BY FLORIDA

DEPARTMENT OF ECONOMIC
OPPORTUNITY

By _____
 Signature
Suzanne Sherman

By _____
 Signature
Meredith Ivey

Title **City Manager**

Title **Chief of Staff**

Date _____

Date _____

Federal _____

Tax ID # **59-6018984**

DUNS # **060236262**

Approved as to form and legal sufficiency, subject only to
 full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
 DEPARTMENT OF ECONOMIC OPPORTUNITY

By: _____

Approved Date: _____

Attachment A – Project Description and Deliverables

1. PROGRAM DESCRIPTION: In April 2018, the U.S. Department of Housing and Urban Development (HUD) announced the State of Florida, Department of Economic Opportunity (DEO) would receive \$633,485,000 in funding to support long-term mitigation efforts following declared disasters in 2016 and 2017 through HUD's Community Development Block Grant Mitigation (CDBG-MIT) program. Awards were distributed on a competitive basis targeting HUD designated Most Impacted and Distressed (MID) Areas, primarily addressing the Benefits to Low-to-Moderate Income (LMI) National Objective. Additional information may be found in the Federal Register, Vol. 84, No. 169.

The Florida Department of Economic Opportunity (DEO) has apportioned the Federal Award to include the following initiatives: Critical Facility Hardening Program \$75,000,000; General Planning Support Program \$20,000,000; General Infrastructure Program \$475,000,000; and State Planning and Administration \$63,485,000.

This award has been granted under the Critical Facility Hardening Program. Projects eligible for funding under this program must harden critical buildings that serve a public safety purpose for local communities. Critical buildings include:

- Potable water facilities
- Wastewater facilities
- Police departments
- Fire departments
- Hospitals
- Emergency operation centers
- Emergency shelters

2. PROJECT DESCRIPTION: The City of Palm Bay, Florida has been awarded Six Hundred Four Thousand Two Hundred Fifty-One Dollars and Zero Cents (**\$604,251.00**) in CDBG-MIT (Community Development Block Grant – Mitigation) funding to harden the Palm Bay Main Police Station to mitigate against impacts from natural and man-made disasters through replacement of the roof and hurricane shutters, and installation of an emergency generator. This project will meet the Low-to-Moderate Income (LMI) National Objective with 56.27% of the area of benefit consisting of low-to-moderate income residents. This project will be leveraged with \$673,418.00 from FEMA HMGP grant funding for a total project cost of \$1,277,669.00.

3. SUBRECIPIENT RESPONSIBILITIES:

- A. Complete and submit to DEO within thirty (30) days of Agreement execution a staffing plan which must be reviewed and approved by the DEO Grant Manager prior to implementation. Should any changes to the staffing plan be deemed necessary, an updated plan must be submitted to DEO for review and approval. The staffing plan must include the following:
 1. Organizational Chart; and
 2. Job descriptions for Subrecipient's employees, contracted staff, vendors and contractors.
- B. Develop and submit a copy of the following policies and procedures to the DEO Grant Manager for review and approval within thirty (30) days of Agreement execution. The DEO Grant Manager will provide approval in writing prior to the policies and procedures being implemented.
 1. Procurement policies and procedures that incorporate 2 CFR Part 200.317-326.
 2. Administrative financial management policies, which must comply with all applicable HUD CDBG-MIT and State of Florida rules.

3. Quality assurance and quality control system policies and procedures that comply with all applicable HUD CDBG-DR and DEO policies.
4. Policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of applicant information, monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring policy, and which items will be monitored, and procedures for referring instances of fraud, waste and abuse to HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email hotline@hudoig.gov).
5. Policies and procedures for the requirements under 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award.
- C. Attend fraud related training offered by HUD OIG to assist in the proper management of the CDBG-MIT grant funds when available.
- D. Upload required documents into a system of record provided by DEO.
- E. Complete and submit an updated Project Detail Budget (Attachment B) for review and approval by DEO no later than thirty (30) days after Agreement execution. Any changes to the Project Detail Budget must be submitted in the monthly report submitted to DEO for review and approval by the DEO Grant Manager.
- F. Maintain organized subrecipient agreement files and make them accessible to DEO or its representatives upon request.
- G. Comply with all terms and conditions of the subrecipient agreement, Mitigation Program Guidelines, Action Plans, Action Plan amendments, and Federal, State and local laws.
- H. Provide copies of all proposed procurement documents to DEO ten (10) business days prior to posting as detailed in Attachment D of Subrecipient Agreement. The proposed procurement documents will be reviewed and approved by DEO Grant Manager. Should the procurement documents require revisions based on state or federal requirements, Subrecipient will be required to postpone procurement and submit revised documents for review and approval.
- I. Complete procurement of all applicants for internal grants management and compliance and direct program and product production, including:
 1. Selection of applicants, subrecipients, and/or staff that will be responsible for managing applicant intake and related operations, compliance, finance, and administration;
 2. Selection of applicants, subrecipients, and/or staff that will be responsible for Appraisal, Environmental Review, title services, and legal services;
 3. Copies of all contracts that will be executed by Subrecipients. Contracts must be provided to DEO prior to execution as detailed in Attachment D. Any contract executed by Subrecipient must follow the terms and conditions set forth in this Agreement. Should the submitted contract require necessary additions and/or changes, DEO's Contract Manager will contact Subrecipient regarding changes. Subrecipient is required to submit the updated contract within thirty (30) days. Should the contract not be submitted in a timely manner, Subrecipient will be required to complete the selection process once more.
- J. Ensure all projects seeking assistance under the current CDBG-MIT funds for Hurricane Irma, and any future funds allocated for Hurricane Irma, provided by DEO, receive the required Environmental Clearance from DEO prior to Subrecipient being able to commit CDBG-MIT funds.
- K. Provide the following documentation to DEO within ten (10) calendar days after the end of each month:
 1. A revised detail report measuring the actual cost versus the projected cost;
 2. An updated Attachment C which documents any changes to the projected progress along with justification for the revision.
- L. Develop and submit to DEO a monthly revised detailed timeline for implementation consistent with the milestones outlined in the Mitigation Program Guidelines and report actual progress against the projected progress ten (10) calendar days after the end of each month.
- M. Provide the following information on a quarterly basis within ten (10) calendar days of the end of each quarter:

1. Submit updated organization chart on a quarterly basis with quarterly report;
2. If staffing changes, there must be a submittal stating the names, job descriptions, on the monthly report deadline;
3. A progress report documenting the following information:
 - a. Accomplishments within the past quarter;
 - b. Issues or risks that have been faced with resolutions; and
 - c. Projected activities to be completed within the following quarter.
- N. Subrecipient shall adhere to the deadlines for the project as agreed upon in the Attachment C-Activity Work Plan. If Subrecipient is unable to meet a deadline within thirty (30) calendar days of the due date, Subrecipient shall request an extension of such deadline from DEO in writing at least thirty (30) business days prior to the deadline. Deadlines shall not be extended outside of the term of this Agreement except by a formal amendment executed in accordance with Section (5) Modification of Agreement.
- O. Close out report will be no later than sixty (60) calendar days after this Agreement ends or is otherwise terminated.

4. ELIGIBLE TASKS AND DELIVERABLES:

A. Deliverable No. 1 – Replace Existing Roof

Subrecipient shall remove and replace entire roof, including:

1. Utilizing current local purchasing requirements, in compliance with HUD guidelines, and prior approval of assigned Grant Manager, secure construction bid for the roof replacement to the specifications detailed in the engineering/design provided under the HMGP Task Orders (engineering funding not requested under CFHP).
2. Remove and properly dispose of existing roof in accordance with local and international building codes.
3. Once roof is installed, ensure code enforcement approval and acceptance of performance in accordance with purchasing agreement.
4. After acceptance and payment to vendor, submit invoice and documentation for reimbursement through SERA.

B. Deliverable No. 2 – Add New/Replace Existing Hurricane Shutters with Automated Roll-Down Shutters

Subrecipient shall remove existing hurricane shutters and replace with permanent, automated roll down hurricane shutters over all exterior openings, including:

1. Utilizing current local purchasing requirements, in compliance with HUD guidelines, and prior approval of assigned Grant Manager, secure bid for the installation of automated, roll-down hurricane shutters to the specifications detailed in the engineering design provided under the HMGP Task Orders (engineering funding not requested under CFHP).
2. Remove and properly dispose of existing hurricane shutters in accordance with local and international building codes.
3. Once shutters are installed, ensure code enforcement approval and acceptance of performance in accordance with purchasing agreement.
4. After acceptance and payment to vendor, submit invoice and documentation for reimbursement through SERA.

C. Deliverable No. 3 – Replace Existing Generator

Subrecipient shall purchase and install a new emergency generator sufficient to operate 100% of electrical needs for the station, and erect a new generator pad and enclosure in an external area of the City of Palm Bay Police Department grounds.

1. Utilizing current local purchasing requirements, in compliance with HUD guidelines, and prior approval of assigned Grant Manager, purchase and install an appropriately sized emergency generator.
2. Construct a new external pad and enclosure for the generator in compliance with local, state, and federal codes.
3. Remove and properly dispose of existing generator, housed internally within the station, in accordance with local and international building codes.
4. Once new generator is installed, ensure code enforcement approval and acceptance of performance in accordance with purchasing agreement.
5. After acceptance and payment to vendor, submit invoice and documentation for reimbursement through SERA.

5. DEO RESPONSIBILITIES:

- A. Monitor the ongoing activities of Subrecipient to ensure all activities are being performed in accordance with the Agreement to the extent required by law or deemed necessary be DEO in its discretion
- B. Assign a Grant Manager as a point of contact for Subrecipient
- C. Review Subrecipient's invoices described herein and process them on a timely basis
- D. DEO shall monitor progress, review reports, conduct site visits, as DEO determines necessary at DEO's sole and absolute discretion, and process payments to Subrecipient

6. 6. DELIVERABLES: Subrecipient agrees to provide the following services as specified:

Deliverable No. 1 – Replace Existing Roof		
Tasks	Minimum Level of Service	Financial Consequences
Subrecipient shall complete eligible tasks as detailed in Section 4.A of this Scope of Work.	Subrecipient may request reimbursement upon completion of the tasks listed in Section 4.A of this Scope of Work as evidenced by submittal of the following documentation: 1) Certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete 2) Photographs of the completed work 3) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable.
Deliverable No. 1 Cost: \$179,900.00		
Deliverable No. 2 – Add New/Replacing Existing Window Shutters With Automated Roll -Down Shutters		
Tasks	Minimum Level of Service	Financial Consequences
Subrecipient shall complete eligible tasks as detailed in	Subrecipient may request reimbursement upon completion	Failure to complete the Minimum Level of Service as specified shall

Section 4.B of this Scope of Work.	of the tasks listed in Section 4.B of this Scope of Work as evidenced by submittal of the following documentation: 1) Certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete 2) Photographs of the completed work 3) Invoice package in accordance with Section 7 of this Scope of Work.	result in non-payment for this deliverable.
Deliverable No. 2 Cost: \$44,573.00		

Deliverable No. 3 – Replace Existing Generator		
Tasks	Minimum Level of Service	Financial Consequences
Subrecipient shall complete eligible tasks as detailed in Section 4.C of this Scope of Work.	Subrecipient may request reimbursement upon completion of the tasks listed in Section 4.C. of this Scope of Work as evidenced by submittal of the following documentation: 1) Certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete 2) Photographs of the completed work 3) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable.
Deliverable No. 3 Cost: \$379,778.00		
Total Project Costs Not to Exceed: \$604,251.00		

COST SHIFTING: The deliverable amounts specified within the Deliverables table above are established based on the Parties' estimation of sufficient delivery of services fulfilling grant purposes under the Agreement in order to designate payment points during the Agreement Period; however, this is not intended to restrict DEO's ability to approve and reimburse allowable costs Subrecipient incurred providing the deliverables herein. Prior written approval from DEO's Grant Manager is required for changes to the above Deliverable amounts that do not exceed **10%** of each deliverable total funding amount. Changes that exceed **10%** of each deliverable total funding amount will require a formal written amendment request from Subrecipient, as described in **MODIFICATION** section of the Agreement. Regardless, in no event shall DEO reimburse costs of more than the total amount of this Agreement.

7. INVOICE SUBMITTAL

DEO shall reimburse Subrecipient in accordance with Section 6, above. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 21 of this Agreement, Subrecipient and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures

(<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>).

- A. Subrecipient shall provide one invoice for services rendered during the applicable period of time as defined in the deliverable table. In any month no deliverable has been completed, the subrecipient will provide notice that no invoicing will be submitted.
- B. The following documents shall be submitted with the itemized invoice:
 1. A cover letter signed by Subrecipient's Grant Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 6, DELIVERABLES, of this Attachment A; (3) have been paid; and (4) were incurred during this Agreement.
 2. Subrecipient's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;
 3. A certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.
 4. Photographs of the completed work.
 5. A copy of all supporting documentation for vendor payments.
 6. A copy of the bank statement that includes the cancelled check or evidence of electronic funds transfer. The State may require any other information from Subrecipient that the State deems necessary to verify that the services have been rendered under this Agreement.
- C. Subrecipient's invoice and all documentation necessary to support payment requests must be submitted into DEO's Subrecipient Management Reporting Application (SERA). Further instruction on SERA invoicing and reporting, along with a copy of the invoice template, will be provided upon execution of the Agreement.

~ Remainder of this page is intentionally left blank ~

Attachment B – Project Budget (Example)

Subrecipient: _____

Contract
Number: _____Modification
Number: _____

Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-MIT Amount	Other Funds	Source*	Total Funds
1. Housing Program - Homeowner Service Project (<i>Example Activities</i>)													
	Home Repair												
	Reconstruction												
	Replacement of Manufactured Homes												
	Temporary Rental and Mortgage Assistance												
	Buyout / Acquisition for Redevelopment												
2. Housing Program - Supportive Housing Initiative PUD Rental Housing Project (<i>Example Activities</i>)													
3. Public Facilities Program – Unified Service Center (<i>Example Activities</i>)													
4. Infrastructure Program (<i>Example Activities</i>)													
	Armstrong Drainage Project												
	Hastings Phase I Sewer												
	Hastings Phase II Sewer												
	Oyster Creek Basin Improvements												

	Orange Street Drainage												
	Avenue D Drainage												
	St. Augustine - Lake Maria Sanchez HMGP Match Drainage												
	St. Augustine Blvd & Cypress Rd Drainage												
5.	Administration												
6.	Planning												
	Totals:												

*Show the sources and amounts of Other Funds needed to complete the project below, including local funds, grants from other agencies and program income.

Source of Other Funds	Amount
1.	
2.	
3.	
4.	

Attachment C – Activity Work Plan (Example)

Subrecipient _____ Activity: _____ Project Budget: _____

Contract Number: _____ Date Prepared: _____ Modification Number: _____

Start Date (month /year)	End Date (month /year)	Describe Proposed Action	Activity	Description	Deliverable	Associated Task	CDBG-MIT Funding	Local/Match Funding	Estimated Funds by End Date

Attachment D – Program and Special Conditions

1. The Subrecipient shall demonstrate that progress is being made in completing project activities in a timely fashion pursuant to the activity work plan. If the Subrecipient does not comply with the activity work plan schedule, a justification for the delay and a plan for timely accomplishment shall be submitted to DEO within 21 calendar days of receiving DEO's request for justification for the delay. Any project for which the Subrecipient has not completed the activities listed in the Activity Work Plan may be rescinded unless DEO agrees that the Subrecipient has provided adequate justification for the delay.
2. The Subrecipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the budget/activity line items as defined in the Project Detail Budget and Activity Work Plan.
3. The Subrecipient shall request DEO's approval for all professional services contracts and/or agreements that will be reimbursed with CDBG-MIT funds. Copies of the following procurement documents must be provided to DEO for review:
 - a. When publication of a Request for Proposal (RFP) is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
 - b. DEO will either approve the procurement or notify the Subrecipient that the procurement cannot be approved because it violates State, Federal or local procurement guidelines. The Subrecipient shall notify DEO in writing no later than 90 calendar days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG-MIT funds to pay for professional services.
4. Prior to the obligation or disbursement of any funds, except for administrative expenses and not to exceed \$5000, the Subrecipient shall complete the following:
 - a. Submit for DEO's approval the documentation required in paragraph 3 above for any professional services contract. The Subrecipient proceeds at its own risk if more than the specified amount is incurred before DEO approves the procurement. If DEO does not approve the procurement of a professional services contract, the local government will not be able to use CDBG-MIT funds for that contract beyond \$5,000.
 - b. Comply with 24 CFR part 58 and the regulations implementing the National Environmental Policy Act, 40 CFR §§ 1500-1508. When the Subrecipient has completed the environmental review process, it shall submit a Request for Release of Funds and Certification. DEO will issue an Authority to Use Grant Funds (form HUD-7015.16) when this condition has been fulfilled to the satisfaction of DEO. If DEO has not issued an Authority to use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process. **SUBRECIPIENT SHALL NOT BEGIN CONSTRUCTION BEFORE DEO HAS ISSUED THE "AUTHORITY TO USE GRANT FUNDS."**
5. The Subrecipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655; hereinafter, the "URA"), implementing regulations at 24 CFR part 42, 49 CFR part 24 and 24 CFR § 570.606(b), the requirements of 24 CFR § 42.325 – 42.350 governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5304(d)), and the requirements in 24 CFR § 570.606(d), governing optional relocation assistance policies.
6. If the Subrecipient undertakes any activity subject to the URA, the Subrecipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can

determine whether remedial action may be needed. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project.

7. The Subrecipient shall timely submit completed forms for all prime and subcontractors as required by this Agreement, DEO, HUD, and applicable, regulations and guidance laws, specifically including but not limited to:
 - a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
 - b. Section 3 Participation Report (Construction Prime Contractor);
 - c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor), (if applicable); and
 - d. Section 3 Participation Report (Construction Subcontractor), (if applicable).
8. In addition, each construction contract or agreement for new or replacement housing must contain language that requires the contractor to meet the Green Building Standard for Replacement and New Construction of Residential Housing, as defined in the Allocation notice published in the Federal Register Volume 81, Number 224 on Monday, November 21, 2016.
9. For each Request for Funds (RFF) that includes reimbursement of construction costs, the Subrecipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by DEO, signed by the contractor and inspection engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by DEO. For each RFF that includes construction costs, the Subrecipient shall provide a copy of AIA form G702, or a comparable form approved by DEO, if applicable, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by DEO, if applicable.
10. For each project, when the Subrecipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
 - a. Notice to Proceed;
 - b. The contractor's performance bond (100 percent of the contract price); and
 - c. The contractor's payment bond (100 percent of the contract price).
11. The Subrecipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 CFR § 570.487(b).
12. The Subrecipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG-MIT funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Subrecipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 CFR § 570.505. Any future change of use of real property shall be in accordance with 24 CFR § 570.489(j).
13. The Subrecipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 CFR part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 CFR 67, and Guidelines for Rehabilitating Historic Buildings.
14. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Subrecipient shall update and submit Form HUD 2880 to DEO within thirty (30) calendar days of the Subrecipient's knowledge of changes in situations which would require that updates be prepared. The Subrecipient must disclose:
 - a. All developers, contractors, consultants and engineers involved in the application or in the planning, development or implementation of the project or CDBG- MIT-funded activity; and

- b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or 10 percent of the grant, whichever is less.
15. If required, the Subrecipient shall submit a final Form HUD 2880, to DEO with the Subrecipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
16. Conflicts of interest relating to procurement shall be addressed pursuant to 24 CFR § 570.489(g). Title 24 CFR § 570.489(h) shall apply in all conflicts of interest not governed by 24 CFR § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG-MIT financial assistance to beneficiaries, businesses or other third parties; or any other financial interest, whether real or perceived. Additionally, the Subrecipient agrees to comply with, and this Agreement is subject to, Chapter 112 F.S.
17. Any payment by the Subrecipient using CDBG-MIT funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG-MIT funds.
18. The Subrecipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.
19. If an activity is designed by an engineer, architect or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

Attachment E – State and Federal Statutes, Regulations, and Policies

The CDBG-MIT funds available to the Subrecipient through this agreement constitute a subaward of DEO's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of DEO's Federal award that are imposed on the Subrecipient and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

The Subrecipient agrees to, and, by signing this Agreement, certifies that, it will comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register Guidance Vol. 84, No. 169/Friday, August 30, 2019/Notices, Vol. 81, No. 224/Monday, November 21, 2016/Notices, Volume 83, No. 28/Friday, February 9, 2018/Notices, Volume 82, No. 11/Wednesday, January 18, 2017/Notices, Volume 82, No. 150/Monday, August 7, 2017/Notices, and Vol. 83, No. 157/Tuesday, August 14, 2018/Notices. Notwithstanding the foregoing, (1) the Subrecipient does not assume any of DEO's responsibilities for environmental review, decision-making and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations and policies as now in effect and as may be amended from time to time that govern the use of the CDBG-MIT funds in complying with its obligations under this agreement, regardless of whether CDBG-MIT funds are made available to the Subrecipient on an advance or reimbursement basis.

The Subrecipient also agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available. The Subrecipient further agrees to comply with all other applicable Federal, State, and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to the following:

1. State of Florida Requirement

State of Florida Requirements are stated throughout this Agreement and Attachments thereto.

2. Audits, Inspections and Monitoring

a. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

b. Inspections and Monitoring

The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 CFR part 200.

The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement.

This review must include:

- (1) Reviewing financial and performance reports required by DEO;
- (2) Following up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO detected through audits, on-site reviews, and other means; and
- (3) Issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 CFR §200.521.

c. Corrective Actions

The Subrecipient shall be subject to reviews and audits by DEO, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2). DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site. DEO may impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

3. Drug-Free Workplace

Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

4. Procurement and Contractor Oversight

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 when procuring property and services under this agreement. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, specifically including, 24 CFR 570.609 or 24 CFR 570.489, as applicable. CDBG funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement. To check for debarred or suspended entities, please visit <https://www.sam.gov/SAM/>

5. Property Standards

Real property acquired by the Subrecipient under this agreement shall be subject to 24 CFR 570.489(j) and 24 CFR 570.200(j). The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to DEO for its CDBG-MIT program or shall be retained after compensating DEO.

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

6. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM, <https://www.sam.gov/SAM/> in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number <https://fedgov.dnb.com/webform/>. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

7. Relocation and Real Property Acquisition

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the URA shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

8. Non-discrimination

a. 24 CFR Part 6

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-MIT funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

b. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995 and meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

c. State and Local Nondiscrimination Provisions

The Subrecipient must comply with the Florida Small and Minority Business Assistance Act (§§ 288.703-288.706, F.S.); Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

(1) General Compliance

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under 24 CFR part 1. The identity of complainants shall

be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(2) Assurances and Real Property Covenants

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives DEO and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-MIT funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

d. Affirmative Action

(1) Approved Plan

The Subrecipient agrees that it shall carry out pursuant to DEO's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR 60. DEO shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(2) Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.

(3) Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

9. Labor and Employment

Labor Standards

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to DEO for review upon request.

10. Section 3 of the Housing and Urban Development Act of 1968

a. Low-Income Person Definition

A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or (ii) A very low-income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

b. Compliance

Subrecipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 75 (formerly 24 CFR part 135). Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, a subrecipient of Section 3-covered assistance is required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations. Subrecipient shall include the following "Section 3 clause" in every "Section 3 covered contract".

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (2) Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, a subrecipient of Section 3-covered assistance is required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training

positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.F. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (6) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

c. Section 3 Benchmarks and Reporting

- (1) Benchmarks. Contracts over \$200,000 trigger Section 3 Benchmark requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents and business concerns to meet these *minimum* numeric goals:
 1. Twenty-five percent (25%) of the total hours on a Section 3 project must be worked by Section 3 workers; and
 2. Five percent (5%) of the total hours on a Section 3 project must be worked by Targeted Section 3 workers.
- (2) Reporting. If the subrecipient's reporting indicates that the subrecipient has not met the Section 3 benchmarks described in 24 CFR § 75.23, pursuant to 24 CFR § 75.25(b), the subrecipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued.
- (3) Recipient will comply with any Section 3 Project Implementation Plan documents provided by HUD or DEO which may be amended from time to time for HUD reporting purposes.

11. Conduct

a. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

b. Conflict of Interest

In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in DEO's procurement policies and procedures. In all cases not governed by the conflict of interest provisions in DEO's procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

c. Lobbying Certification

The Subrecipient hereby certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (3) The language of paragraph (i) through (iv) 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; and
- (4) 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 required by section 1352, title 31, U.S.C. 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.

d. Religious Activities

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

Equal Treatment for Faith-Based Organizations. Prohibits any State or local government receiving funds under any Department program, or any intermediate organization with the same duties as a governmental entity, from discriminating for or against an organization on the basis of the organization's religious character or affiliation. Prohibits religious organizations from engaging in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance.

Prohibits an organization that participates in programs funded by direct financial assistance from the Department, in providing services, from discriminating against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

e. Environmental Conditions

(1) Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making and action (see 24 CFR part 58) and is not delegated DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. If DEO has not issued an Authority to Use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process.

(2) Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- (a) Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and
- (b) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.
- (c) The Clean Air and Water Act: If this Contract is in excess of \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act, as amended, 42 U.S.C. 7401,

Section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, et seq., Executive Order 11738 and Environmental Protection Agency regulations. Contractor shall report any violation of the above to DEO.

- (d) Energy Efficiency: Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163.
- (3) Flood Disaster Protection
The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-MIT award and listed at the beginning of this Attachment.
- (4) Lead-Based Paint
The Subrecipient shall follow DEO's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.
- (5) Historic Preservation
The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

- (6) Additional Regulations
 - (a) The Temporary Assistance for Needy Families Program ("TANF"), 45 CFR Parts 260-265, the Social Services Block Grant ("SSBG"), 42 U.S.C. 1397d, and other applicable federal regulations and policies promulgated thereunder.
 - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.*, which prohibits discrimination on the basis of sex in educational programs.
 - (c) Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
 - (d) The Pro-Children Act: Contractor agrees to comply with the Pro-Children Act of 1994, 20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub-contracts. In compliance with Public Law (Pub. L.) 103-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.
 - (e) Public Announcements and Advertising: When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, Contractor shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

- (f) Purchase of American-Made Equipment and Products: Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement will be American-made.
- (g) The Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117), which prohibits distribution of federal funds made available under the Act to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.
- (h) Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333) — If this Contract involves federal funding in excess of \$2,000 for construction contracts or in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5) is required. Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (i) Resource Conservation and Recovery Act (RCRA). Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.
- (j) Immigration Reform and Control Act. Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, which requires employment verification and retention of verification forms for any individuals hired who will perform any services under the contract.

When it is determined that the Subrecipient is in non-compliance with federal or state program requirements, the State may impose any of the additional conditions and/or requirements outlined in 2 CFR § 200.207.

Attachment F – Civil Rights Compliance

Fair Housing

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will "affirmatively further fair housing" in its community. A Subrecipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

Each Subrecipient shall do the following:

1. Have in place a fair housing resolution or ordinance that covers all Federally protected classes (race, color, familial status, handicap, national origin, religion and sex);
2. Designate an employee as the Fair Housing Coordinator who is available during regular business hours to receive fair housing calls;
3. Publish the Fair Housing Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask fair housing questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website;
4. Establish a system to record the following for each fair housing call:
 - a) The nature of the call,
 - b) The actions taken in response to the call,
 - c) The results of the actions taken and
 - d) If the caller was referred to another agency, the results obtained by the referral agency;
5. Conduct at least one fair housing activity each quarter. Identical activities (see examples below) shall not be conducted in consecutive quarters; and
6. Display a fair housing poster in the CDBG-MIT Office. (This does not count as a fair housing activity.)

The Subrecipient shall ensure that the fair housing contact person has received training so that he/she can handle fair housing phone inquiries or refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

1. Define where discriminatory practices are occurring,
2. Help the community measure the effectiveness of its outreach efforts, and
3. Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

1. Making fair housing presentations at schools, civic clubs and neighborhood association meetings;
2. Conducting a fair housing poster contest or an essay contest;
3. Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales and church festivals; and
4. Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents and apartment complex owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity; however, mailing a DEO-approved fair housing brochure as an insert with utility bills will be accepted as an activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

The Subrecipient shall document its fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG-MIT project file and include information about the activities in the comment section of each quarterly report.

Equal Employment Opportunity

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-MIT funds will abide by the Equal Employment Opportunity (EEO) Laws of the United States. A Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each Subrecipient shall do the following:

1. Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors, subcontractors, subrecipients and consultants from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age or genetics;
2. Designate an employee as the EEO Coordinator who is available during regular business hours to receive EEO calls;
3. Publish the EEO Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask EEO questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each EEO call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and
 - c) The results of the actions taken;
5. Each Subrecipient shall maintain a list of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The Subrecipient shall use this list to solicit companies to bid on CDBG-MIT-funded construction activities and shall provide a copy of the list to the prime contractor(s) to use when it hires subcontractors and consultants. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list at the following website: <https://osd.dms.myflorida.com/directories>.
6. Incorporate the Equal Employment Opportunity clause set forth in 41 CFR Part 60-1.4(b) into any contracts or subcontracts that meet the definition of "federally assisted construction contract" in 41 CFR 60-1.3.

Section 504 and the Americans with Disabilities Act (ADA)

As a condition for the receipt of CDBG-MIT funds, the Subrecipient must certify that it provides access to all federally funded activities to all individuals, regardless of handicap. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

The Subrecipient shall do the following:

1. Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who:
 - a) Has a physical or mental impairment which substantially limits one or more major life activities,
 - b) Has a record of such an impairment or
 - c) Is regarded as having such an impairment;
2. Designate an employee as the Section 504/ADA Coordinator who is available during regular business hours to receive Section 504/ADA calls;
3. Publish the Section 504/ADA Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask Section 504/ADA questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each Section 504/ADA call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and

c) The results of the actions taken.

Section 504 prohibitions against discrimination (see 45 CFR part 84) apply to service availability, accessibility, delivery, employment and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:

1. Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits,
2. Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
3. Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.

The ADA regulations (Title II, 28 CFR part 35, and Title III, 28 CFR part 36) prohibit discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Section 3 - Economic Opportunities for Low- and Very Low-Income Persons

Each Subrecipient shall encourage its contractors to hire qualified low- and moderate-income residents for any job openings that exist on CDBG-MIT-funded projects in the community. The Subrecipient and its contractors shall keep records to document the number of low- and moderate-income people who are hired to work on CDBG-MIT-funded projects. The number of low- and moderate-income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following Section 3 clause is required to be included in CDBG-MIT-funded contracts of \$100,000 or more:

Section 3 Clause

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are Subrecipients of HUD assistance for housing.
2. The Parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the

notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
6. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Civil Rights Regulations

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will abide by the following Federal laws and regulations:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 CFR § 570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 CFR § 570.490(b) – Unit of general local government's record;
6. 24 CFR § 570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of or subjected to discrimination under any program or activity receiving CDBG-MIT funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 CFR part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Equal Employment Opportunity; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

I hereby certify that _____ shall comply with all of the provisions and Federal regulations listed in this Attachment F.

By: _____ **Date:** _____

Name: _____

Title: _____

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Attachment G – Reports

The following reports must be completed and submitted to DEO in the time frame indicated below. Failure to timely file these reports constitutes an Event of Default, as defined in Paragraph (10) Default, of this Agreement.

1. **Monthly Progress Report** must be submitted to DEO ten (10) calendar days after the end of each month.
2. A **Quarterly Progress Report** must be submitted to DEO on forms to be provided by DEO no later than the 10th of every April, July, October and January.
3. A **Contract and Subcontract Activity** form, Form HUD-2516, currently available at https://www.hud.gov/sites/documents/DOC_36660; which is incorporated herein by reference, must be submitted by April 15 and October 15 each year through the DEO's SERA reporting system. The form must reflect all contractual activity for the period, including Minority Business Enterprise and Woman Business Enterprise participation. If no activity has taken place during the reporting period, the form must indicate "no activity".

The Subrecipient shall closeout its use of the CDBG-MIT funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to the Subrecipient) and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG-MIT funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-MIT funds. Further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

4. In accordance with 2 CFR part 200, should the Subrecipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with 2 CFR part 200 and submitted to DEO no later than nine months from the end of the Subrecipient's fiscal year. If the Subrecipient did not meet the audit threshold, an **Audit Certification Memo** must be provided to DEO no later than nine months from the end of the Subrecipient's fiscal year.
5. A copy of the **Audit Compliance Certification** form, Attachment J, must be emailed to audit@deo.myflorida.com within sixty (60) calendar days of the end of each fiscal year in which this subgrant was open.
6. The **Section 3 Summary Report**, form HUD-60002, must be completed and submitted through DEO's SERA reporting system by July 31, annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.
7. Request for Funds must be submitted as required by DEO and in accordance with the ***Project Description and Deliverables, Project Detail Budget and Activity Work Plan***.
8. All forms referenced herein are available online or upon request from DEO's grant manager for this Agreement.

Attachment H – Warranties and Representations

Financial Management

The Subrecipient's financial management system must comply with the provisions of 2 CFR part 200 (and particularly 2 C.F.R 200.302 titled "Financial Management"), Section 218.33, F.S., and include the following:

1. Accurate, current and complete disclosure of the financial results of this project or program.
2. Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
3. Effective control over and accountability for all funds, property and other assets. The Subrecipient shall safeguard all assets and assure that they are used solely for authorized purposes.
4. Comparison of expenditures with budget amounts for each Request for Funds (RFF). Whenever appropriate, financial information should be related to performance and unit cost data.
5. Written procedures to determine whether costs are allowed and reasonable under the provisions of the 2 CFR part 200 (and particularly 2 CFR 200 Subpart E titled "Costs Principles") and the terms and conditions of this Agreement.
6. Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions must follow the provisions of 2 CFR §§ 200.318-200.327 and be conducted in a manner providing full and open competition. The Subrecipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements. Awards must be made to the responsible and responsive bidder or offeror whose proposal is most advantageous to the program, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Subrecipient. Any and all bids or offers may be rejected if there is a sound, documented reason.

Codes of Conduct

The Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents of the Subrecipient. (*See* 2 CFR § 200.318(c)(1).)

Business Hours

The Subrecipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

Licensing and Permitting

All contractors or employees hired by the Subrecipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Subrecipient.

Attachment I – Audit Requirements

The administration of resources awarded by DEO to the Subrecipient may be subject to audits and/or monitoring by DEO as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F - Audit Requirements, and section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by DEO staff to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED. This part is applicable if the Subrecipient is a state or local government or nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Subrecipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through DEO by this agreement. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Subrecipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Subrecipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Subrecipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Subrecipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Subrecipient resources obtained from other than federal entities).

PART II: STATE FUNDED. This part is applicable if the Subrecipient is a non-state entity as defined by Section 215.97(2), F.S.

1. In the event that the Subrecipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Subrecipient (for fiscal years ending June 30, 2017, and thereafter), the Subrecipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the Subrecipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting

package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Subrecipient's resources obtained from other than state entities).

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), F.S., State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, F.S. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR § 200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR § 200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Subrecipient directly to each of the following:

- a. DEO at each of the following addresses:

Electronic copies (preferred): or
Audit@deo.myflorida.com

Paper (hard copy):
 Department Economic Opportunity
 MSC # 75, Caldwell Building
 107 East Madison Street
 Tallahassee, FL 32399-4126

- b. The Auditor General's Office at the following address:

Auditor General
 Local Government Audits
 342 Claude Pepper Building, Room 401
 111 West Madison Street
 Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or the management letter required by Part III of this form shall be submitted by or on behalf of the Subrecipient directly to:

Electronic copies (preferred):
Audit@deo.myflorida.com

or

Paper (hard copy):
Department Economic Opportunity
MSC # 75, Caldwell Building
107 East Madison Street
Tallahassee, FL. 32399-4126

4. Any reports, management letters, or other information required to be submitted DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Subrecipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION. The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or six (6) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The Subrecipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of six (6) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

Exhibit 1 to Attachment I – Funding Sources

Federal Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:

Federal Awarding Agency:	U.S. Department of Housing and Urban Development
Federal Funds Obligated to Subrecipient:	\$604,251.00
Catalog of Federal Domestic Assistance Title:	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii
Catalog of Federal Domestic Assistance Number:	14.228
Project Description:	Funding is being provided to harden the Palm Bay Main Police Station through replacement of the roof, hurricane shutters, and installation of an emergency generator.
<i>This is not a research and development award.</i>	

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

Federal Program

1. The Subrecipient shall perform its obligations in accordance with Sections 290.0401- 290.048, F.S.
2. The Subrecipient shall perform its obligations in accordance with 24 CFR §§ 570.480 – 570.497.
3. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
4. The Subrecipient shall perform the obligations in accordance with chapter 73C-23.0051(1) and (3), F.A.C.
5. The Subrecipient shall be governed by all applicable laws, rules and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient's Notice of Subgrant Award/Fund Availability (NFA).

State Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following: *N/A*

Matching Resources for Federal Programs: *N/A*

Subject to Section 215.97, Florida Statutes: *N/A*

Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows: *N/A*

NOTE: Title 2 CFR § 200.331 and Section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 and the Notice of Subgrant Award/Fund Availability be provided to the Subrecipient.

Attachment J – Audit Compliance Certification

Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.

Subrecipient:

FEIN:

Subrecipient's Fiscal
Year:

Contact Name:

Contact's Phone:

Contact's Email:

1. Did the Subrecipient expend state financial assistance, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and the Department of Economic Opportunity (DEO)? ☐ Yes ☐ No

If the above answer is yes, answer the following before proceeding to item 2.

Did the Subrecipient expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of Section 215.97, Florida Statutes and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and DEO? ☐ Yes ☐ No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did the Subrecipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR part 200, subpart F, as revised.

By signing below, I certify, on behalf of the Subrecipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

Attachment K – Subrecipient Enterprise Resource Application (SERA) Form

Attachment K will be provided after execution of this Agreement

Attachment L

2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to

construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See 200.323 - Procurement of Recovered Materials.

(K) See 200.216 - Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See 200.322 – Domestic Preferences for procurements.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Attachment M

**State of Florida
Department of Economic Opportunity

Federally Funded
Community Development Block Grant
Disaster Recovery (CDBG-MIT) Subrogation Agreement**

This Subrogation and Assignment Agreement (“Agreement”) is made and entered into by and between the City of Palm Bay, Florida (hereinafter referred to as “Subrecipient”) and the State of Florida, Department of Economic Opportunity (hereinafter referred to as “DEO”).

In consideration of Subrecipient’s receipt of funds or the commitment by DEO to evaluate Subrecipient’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the DEO Community Development Block Grant-Mitigation Program (the “CDBG-MIT Program”) administered by DEO, Subrecipient hereby assigns to DEO all of Subrecipient’s future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-MIT Program and that are determined in the sole discretion of DEO to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds, Subrecipient agrees to immediately notify DEO who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to DEO, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to DEO shall not exceed the amount received from the CDBG-MIT Program.

Subrecipient agrees to assist and cooperate with DEO to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO. Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by DEO, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to DEO, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-MIT Program, the Policies, any amounts received under the Mitigation Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

Subrecipient explicitly allows DEO to request of any company with which Subrecipient held insurance policies, or FEMA or the SBA or any other entity from which Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by DEO to monitor/enforce its interest in the rights assigned to it under this Agreement and give Subrecipient's consent to such company to release said information to DEO.

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to DEO, if Subrecipient received Grant Proceeds under the CDBG-MIT Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to DEO, and DEO will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by DEO.
2. If the Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by DEO to reduce payments of the Grant Proceeds to the Subrecipient, and all Subsequent DOB Proceeds shall be returned to the Subrecipient.
3. If the Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by DEO.
4. If DEO makes the determination that the Subrecipient does not qualify to participate in the CDBG-MIT Program or the Subrecipient determines not to participate in the CDBG-MIT Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, and this Agreement shall terminate.

Once DEO has recovered an amount equal to the Grant Proceeds paid to Subrecipient, DEO will reassign to Subrecipient any rights assigned to DEO pursuant to this Agreement.

Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

~ Remainder of this page is intentionally left blank ~

The person executing this Agreement on behalf of the Subrecipient hereby represents that he\she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorney’s fees.

CITY OF PALM BAY, FLORIDA		DEPARTMENT OF ECONOMIC OPPORTUNITY	
By	<div>Signature Suzanne Sherman</div>	By	<div>Signature Meredith Ivey</div>
Title	City Manager	Title	Chief of Staff
Date		Date	

State of Florida
Department of Economic Opportunity
Federally Funded
Community Development Block Grant
Mitigation Program (CDBG-MIT)
Subrecipient Agreement

THIS SUBRECIPIENT AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, (hereinafter referred to as “DEO”) and the City of Palm Bay, Florida, hereinafter referred to as the “Subrecipient” (each individually a “Party” and collectively “the Parties”).

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, pursuant to Public Law (P.L.) P.L. 115-123 Bipartisan Budget Act of 2018 and Additional Supplemental Appropriations for Disaster Relief Act 2018 (approved February 9, 2018), and P.L. 116-20 Supplemental Appropriations for Disaster Relief Requirements Act, 2019 (approved June 6, 2019), Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-56, the “Continuing Appropriations Act, 2018” ; and the requirements of the Federal Register (FR) notices entitled “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees”, 84 FR 45838 (August 30, 2019) and “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees” (CDBG Mitigation) 86 FR 561 (January 6, 2021);(hereinafter collectively referred to as the “Federal Register Guidance”), the U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) has awarded Community Development Block Grant–Mitigation (CDBG-MIT) funds to DEO for mitigation activities authorized under Title I of the Housing and Community Development Act of 1974 (HCDA) (42 United States Code (U.S.C.) § 5301 *et seq.*) and applicable implementing regulations at 24 C.F.R. part 570 and consistent with the Appropriations Act.

WHEREAS, CDBG-MIT funds made available for use by the Subrecipient under this Agreement constitute a subaward of the DEO Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of DEO’s Federal award.

WHEREAS, the Subrecipient has legal authority to enter into this Agreement and by signing this Agreement, the Subrecipient represents and warrants to DEO that it will comply with all the requirements of the subaward described herein.

WHEREAS, all CDBG-MIT activities carried out by the Subrecipient will: (1) meet the definition of mitigation activities. For the purpose of this funding, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters; (2) address the current and future risks as identified in DEO’s Mitigation Needs Assessment of most impacted and distressed area(s); (3) be CDBG-eligible activities under the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and a Covered Project.

NOW THEREFORE, DEO and the Subrecipient agree to the following:

(1) SCOPE OF WORK

The Scope of Work for this Agreement includes Attachment A, Project Description and Deliverables. With respect to Attachment B, Project Budget, and Attachment C, Activity Work Plan, the Subrecipient shall submit to DEO such Attachments in conformity with the current examples attached hereto as necessary and appropriate. Provided further, if there is a disagreement between the Parties, with respect to the formatting and contents of such attachments, then DEO's decisions with respect to same shall prevail, at DEO's sole and absolute discretion.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

Subrecipient has diligently reviewed this Agreement and is a sophisticated organization having experience managing projects with funds made available through federal grants. Subrecipient is familiar with DEO's grant agreement with HUD, has reviewed applicable CDBG-MIT regulations and guidelines, will conduct, and will ensure its activities are in compliance with DEO's grant agreement with HUD and all applicable CDBG-MIT regulations and guidelines. Subrecipient agrees to abide by all applicable State and Federal laws, rules and regulations, as now in effect and as may be amended from time to time, including but not limited to, the Federal laws and regulations set forth in 24 CFR Part 570, applicable Federal Register Notices, the State's Action Plan, and all applicable CDBG-MIT regulations and guidelines.

Subrecipient shall ensure that all its activities under this Contract shall be conducted in conformance with these provisions, as applicable: 45 CFR Part 75, 29 CFR Part 95, 2 CFR Part 200, 20 CFR Part 601, 24 CFR Part 570 subpart I, *et seq.*, and all other applicable federal laws, regulations, and policies governing the funds provided under this Agreement as now in effect and as may be amended from time to time.

(3) PERIOD OF AGREEMENT

This Agreement is effective as of the date DEO executes this Agreement (the "Effective Date") and ends forty-eight (48) months after execution by DEO, unless otherwise terminated as set forth herein.

(4) RENEWAL AND EXTENSION

This Agreement shall not be renewed. DEO shall not grant any extension of this Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion and DEO's Director of the Division of Community Development approves such extension in writing

(5) MODIFICATION OF AGREEMENT

Modifications to this Agreement shall be valid only when executed in writing by the Parties. Any modification request by the Subrecipient constitutes a request to negotiate the terms of this Agreement. DEO may accept or reject any proposed modification based on DEO's sole determination and absolute discretion, that any such acceptance or rejection is in the State's best interest.

(6) RECORDS

(a) The Subrecipient's performance under this Agreement shall be subject to 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as now in effect and as may be amended from time to time.

(b) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability,

and representatives of the Federal government and their duly authorized representatives shall have access to any of the Subrecipient's books, documents, papers and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) The Subrecipient shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) The Subrecipient will provide to DEO all necessary and appropriate financial and compliance audits in accordance with Paragraph (7), Audit Requirements and Attachments I and J herein and ensure that all related party transactions are disclosed to the auditor.

(e) The Subrecipient shall retain sufficient records to show its compliance with the terms of this Agreement and the compliance of all subrecipients, contractors, subcontractors and consultants paid from funds under this Agreement for a period of six (6) years from the date DEO issues the final closeout for this award. The Subrecipient shall also comply with the provisions of 24 CFR 570.493 and 24 CFR 570.502(a)(7)(ii). The Subrecipient shall further ensure that audit working papers are available upon request for a period of six (6) years from the date DEO issues the final closeout of this Agreement, unless extended in writing by DEO. The six-year period may be extended for the following reasons:

1. Litigation, claim or audit initiated before the six-year period expires or extends beyond the six-year period, in which case the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for six (6) years after final disposition.

3. Records relating to real property acquired shall be retained for six (6) years after the closing on the transfer of title.

(f) The Subrecipient shall maintain all records and supporting documentation for the Subrecipient and for all contractors, subcontractors and consultants paid from funds provided under this Agreement, including documentation of all program costs in a form sufficient to determine compliance with the requirements and objectives of the scope of work and all other applicable laws and regulations.

(g) The Subrecipient shall either (i) maintain all funds provided under this Agreement in a separate bank account or (ii) ensure that the Subrecipient's accounting system shall have sufficient internal controls to separately track the expenditure of all funds from this Agreement. Provided further, that the only option available for advanced funds is to maintain such advanced funds in a separate bank account. There shall be no commingling of funds provided under this Agreement with any other funds, projects or programs. DEO may, in its sole discretion, disallow costs made with commingled funds and require reimbursement for such costs as described herein, Subparagraph (22)(e), Repayments.

(h) The Subrecipient, including all of its employees or agents, contractors, subcontractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the Federal government or their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(7) AUDIT REQUIREMENTS

(a) The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 CFR part 200 if it expends seven hundred fifty thousand dollars (\$750,000) or more in Federal awards from all sources during its fiscal year.

(b) Within sixty (60) calendar days of the close of Subrecipient's fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to audit@deo.myflorida.com, and DEO's grant manager; a blank version of which is attached hereto as

Attachment J. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Subrecipient.

(c) In addition to the submission requirements listed in Attachment I, Audit Requirements, the Subrecipient shall send an electronic copy of its audit report to DEO's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open CDBG-MIT subgrant.

(d) Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 C.F.R 200.512, when such provisions are applicable to this Agreement.

(8) REPORTS

Subrecipient shall provide DEO with all reports and information set forth in Attachment G, Reports. The monthly reports and administrative closeout reports must include the current status and progress of Subrecipient and all subcontractors in completing the work described in Attachment A, Scope of Work, and the expenditure of funds under this Agreement. Within 10 calendar days of a request by DEO, Subrecipient shall provide additional program updates or information. Without limiting any other remedy available to DEO, if all required reports and copies are not sent to DEO or are not completed in a manner acceptable to DEO, payments may be withheld until the reports are completed to DEO's satisfaction. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(9) INSPECTIONS AND MONITORING

(a) Subrecipient shall cooperate and comply with DEO, HUD, and auditors with any inspections and will immediately provide access to records and financial statements as deemed necessary by DEO, HUD, and their respective auditors at least in accordance with requirements of 2 CFR part 200 and 24 CFR 570.489.

(b) Subrecipient shall cooperate and comply with monitoring of its activities as deemed necessary by DEO to ensure that the subaward is used for authorized purposes in compliance with federal statutes, regulations, and this Agreement.

(c) Without limiting the actions DEO, HUD, or their respective investigators may take, monitoring procedures will include at a minimum: (1) reviewing financial and performance reports required by DEO; (2) following-up and ensuring Subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from DEO as detected through audits, on-site reviews and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to Subrecipient from DEO as required by 2 CFR §200.521.

(d) Corrective Actions: DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require Subrecipient to take timely and appropriate action on all deficiencies pertaining to the federal award provided to Subrecipient from the pass-through entity as detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, DEO may in its sole discretion and without advance notice, impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance. DEO may also take other action as stated in Paragraph (13) Remedies or otherwise allowable by law.

(10) DUPLICATION OF BENEFITS

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 *et seq.*) and described in Appropriations Acts. Subrecipient must comply with HUD's requirements for duplication of benefits, as described in the Federal Register and HUD guidance (including HUD training materials). Subrecipient shall carry out the activities under this

Agreement in compliance with DEO's procedures to prevent duplication of benefits. Subrecipient shall sign a Subrogation Agreement (See Attachment M).

(11) LIABILITY

(a) If Subrecipient is a state agency or subdivision, as defined in Section 768.28(2), F.S., pursuant to Section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) Subrecipient assumes sole responsibility for the training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, Florida Statutes. Subrecipient shall hold DEO harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. For purposes of this Agreement, Subrecipient agrees that it is not an employee or agent of DEO but is an independent contractor.

(c) Subrecipient agrees to be fully responsible for its negligent or tortious acts or omissions, which result in claims or suits against DEO. Subrecipient agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by DEO to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(d) Nothing herein is intended to serve as a waiver of sovereign immunity by DEO or the Subrecipient.

(12) EVENTS OF DEFAULT

If any of the following events occur ("Events of Default"), DEO may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies available through this Agreement or pursue any remedy at law or in equity, without limitation:

(a) Any warranty or representation made by Subrecipient, in this Agreement or any previous agreement with DEO, is or becomes false or misleading in any respect, or if Subrecipient fails to keep or perform any of the obligations, terms, or covenants in this Agreement or any previous agreement with DEO or HUD, and/or has not cured them in timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

(b) Any material adverse change occurs in the financial condition of Subrecipient at any time during the term of this Agreement and the Subrecipient fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by DEO;

(c) If Subrecipient fails to submit any required report or submits any required report with incorrect, incomplete, or insufficient information or fails to submit additional information as requested by DEO;

(d) If Subrecipient fails to perform or timely complete any of its obligations under this Agreement, including participating in DEO's Implementation Workshop. The Parties agree that in the event DEO elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise any remedies allowable herein or at law and without becoming liable to make any further payment.

(e) Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay

the Subrecipient believes is excusable under this paragraph, Subrecipient shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Subrecipient could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Subrecipient of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against DEO. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Subrecipient shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Subrecipient, provided that Subrecipient grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Subrecipient for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

(13) REMEDIES

If an Event of Default occurs, DEO may in its sole discretion and without limiting any other right or remedy available, provide thirty (30) calendar days written notice to the Subrecipient and if the Subrecipient fails to cure within those thirty (30) calendar days DEO may choose to exercise one or more of the following remedies, either concurrently or consecutively:

- (a) Terminate this Agreement upon written notice by DEO sent in conformity with Paragraph (17) Notice and Contact;
- (b) Begin any appropriate legal or equitable action to enforce performance of this Agreement;
- (c) Withhold or suspend payment of all or any part of a request for payment;
- (d) Demand Subrecipient return to DEO any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and
- (e) Exercise any corrective or remedial actions, including but not limited to:
 - 1. Request additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance;
 - 2. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
 - 3. Advise the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question.
- (f) Exercise any other rights or remedies which may be otherwise available under law.

Pursuit of any of the above remedies does not preclude DEO from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by DEO to require strict performance does not affect, extend or waive any other right or remedy

available or affect the later exercise of the same right or remedy by DEO for any other default by the Subrecipient.

(14) DISPUTE RESOLUTION

DEO shall decide disputes concerning the performance of the Agreement, and document dispute decisions in writing and serve a copy of same to Subrecipient. All decisions are final and conclusive unless the Subrecipient files a petition for administrative hearing with DEO within twenty-one (21) days from the date of receipt of the decision. Exhaustion of administrative remedies prescribed in Chapter 120, F.S., is an absolute condition precedent to Subrecipient's ability to pursue any other form of dispute resolution; provided however, that the Parties may mutually agree to employ the alternative dispute resolution procedures outlined in Chapter 120, F.S.

(15) CITIZEN COMPLAINTS

The goal of DEO is to provide an opportunity to resolve complaints in a timely manner, usually within fifteen (15) business days of the receipt of the complaint as expected by HUD, if practicable, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

Applicants are allowed to appeal program decisions related to one of the following activities:

- (a) A program eligibility determination,
- (b) A program assistance award calculation, or
- (c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Long-Term Resiliency email at CDBG-DR@deo.myflorida.com or submit by postal mail to the following address:

Attention: Office of Long-Term Resiliency
Florida Department of Economic Opportunity
107 East Madison Street
The Caldwell Building, MSC 400
Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:

- (a) Investigations as necessary,
- (b) Resolution, and
- (c) Follow-up actions.

If the complainant is not satisfied by Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to DEO at:

Department of Economic Opportunity
Caldwell Building, MSC-400
107 E Madison Street
Tallahassee, FL 32399

The Florida Office of Long-Term Resiliency operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or www.hud.gov/fairhousing.

(16) TERMINATION

(a) DEO may immediately suspend or terminate this Agreement for cause by providing written notice, from the date notice is sent by DEO. Cause includes, but is not limited to: an Event of Default as set forth in this Agreement; Subrecipient's improper or ineffective use of funds provided under this Agreement; fraud; lack of compliance with any applicable rules, regulations, statutes, executive orders, HUD guidelines, policies, directives or laws; failure, for any reason, to timely and/or properly perform any of the Subrecipient's obligations under this Agreement; submission of reports that are incorrect or incomplete in any material respect and refusal to permit public access to any document, paper, letter or other material subject to disclosure under law, including Chapter 119, F.S., as amended. The aforementioned reasons for termination are listed in the immediately preceding sentence for illustration purposes but are not limiting DEO's sole and absolute discretion with respect to DEO's right to terminate this Agreement. In the event of suspension or termination, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs.

(b) DEO may unilaterally terminate this Agreement, in whole or in part, for convenience by providing Subrecipient fourteen (14) days written notice from the date notice is sent by DEO, setting forth the reasons for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, DEO determines that the remaining portion of the award will not accomplish the purpose for which the award was made, DEO may terminate the portion of the award which will not accomplish the purpose for which the award was made. Subrecipient shall continue to perform any work not terminated. In the event of termination for convenience, Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs for the terminated portion of work.

(c) The Parties may terminate this Agreement for their mutual convenience in writing, in the manner agreed upon by the Parties, which must include the effective date of the termination.

(d) In the event that this Agreement is terminated, Subrecipient shall not incur new obligations under the terminated portion of the Agreement after the date Subrecipient has received the notification of termination. Subrecipient shall cancel as many outstanding obligations as possible. DEO shall disallow all costs incurred after Subrecipient's receipt of the termination notice. DEO may, to the extent authorized by law, withhold payments to Subrecipient for the purpose of set-off until the exact amount of damages due to DEO from Subrecipient is determined.

(e) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-MIT funds.

(f) Any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must either:

1. Be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein; or
2. If not used to meet a national objective, Subrecipient shall pay to DEO an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-

CDBG-MIT funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

(g) The rights and remedies under this clause are in addition to any other rights or remedies provided by law or under this Agreement.

(17) NOTICE AND CONTACT

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, first class or certified mail with return receipt requested, email with confirmation of receipt of email from Subrecipient, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of DEO's Grant Manager for this Agreement is:

Paul Wotherspoon

107 E. Madison Street

Tallahassee, Florida 32399

850-717-8502

Paul.wotherspoon@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Nicholas Zynko

130 Malabar Road SE

Palm Bay, Florida 32907

321-292-9001

Nicholas.zynko@palmbayflorida.org

(d) If different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as provided for in this Agreement. Such change shall not require a formal amendment of the Agreement.

(18) CONTRACTS

If the Subrecipient contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to the DEO grant manager for prior written approval. For each contract, the Subrecipient shall report to DEO as to whether that contractor or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, F.S. The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 and §200.330 when procuring property and services under this Agreement (refer to Attachments D & E).

The Subrecipient shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

- (a) the period of performance or date of completion;
- (b) the performance requirements;
- (c) that the contractor is bound by the terms of this Agreement;
- (d) that the contractor is bound by all applicable State and Federal laws, rules, and regulations;
- (e) that the contractor shall hold DEO and Subrecipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;
- (f) the obligation of the Subrecipient to document in Subrecipient's reports the contractor's progress in performing its work under this Agreement;

- (g) the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards – (refer to Attachment L)

Subrecipient must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.489(l)), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

Subrecipient shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

(19) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous understandings. No waiver by DEO may be effective unless made in writing by an authorized DEO official.

(20) ATTACHMENTS

- (a) If any inconsistencies or conflict between the language of this Agreement and the attachments arise, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- (b) This Agreement contains the following attachments:
 - Attachment A – Project Description and Deliverables
 - Attachment B – Project Budget (Example)
 - Attachment C – Activity Work Plan (Example)
 - Attachment D – Program and Special Conditions
 - Attachment E – State and Federal Statutes, Regulations and Policies
 - Attachment F – Civil Rights Compliance
 - Attachment G – Reports
 - Attachment H – Warranties and Representations
 - Attachment I – Audit Requirements and Exhibit 1 to Attachment I – Funding Sources
 - Attachment J – Audit Compliance Certification
 - Attachment K – SERA Access Authorization Form (form provided after execution of this agreement)
 - Attachment L - 2 CFR Appendix II to Part 200
 - Attachment M – Subrogation Agreement

(21) FUNDING/CONSIDERATION

- (a) The funding for this Agreement shall not exceed Eighty Thousand One Hundred Eighty Seven Dollars and Zero Cents (\$80,187.00) subject to the availability of funds. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon annual appropriations by the Legislature and subject to any modification in accordance with Chapter 216, F.S. or the Florida Constitution.

- (b) DEO will provide funds to Subrecipient by issuing a Notice of Subgrant Award/Fund Availability ("NFA") through DEO's financial management information system. Each NFA may contain specific terms, conditions, assurances, restrictions or other instructions applicable to the funds provided by the NFA. By accepting funds made available through an NFA, Subrecipient agrees to comply with all terms, conditions, assurances, restrictions or other instructions listed in the NFA.

(c) By execution of this Agreement, Subrecipient certifies that necessary written administrative procedures, processes and fiscal controls are in place for the operation of its CDBG-MIT program for which Subrecipient receives funding from DEO. These written administrative procedures, processes and fiscal controls must, at minimum, comply with applicable state and federal law, rules, regulations, guidance and the terms of this Agreement. Subrecipient agrees to comply with all the terms and conditions of Attachment D, Program and Special Conditions.

(d) Subrecipient shall expend funds only for allowable costs and eligible activities, in accordance with the Scope of Work.

(e) Subrecipient shall request all funds in the manner prescribed by DEO. The authorized signatory for the Subrecipient set forth on the SERA Access Authorization Form must approve the submission of each Request for Funds ("RFF") on behalf of Subrecipient. SERA Access Authorization Form will be provided after the execution of this Agreement.

(f) Except as set forth herein, or unless otherwise authorized in writing by DEO, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for funding with CDBG-MIT funds.

(g) If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the Florida Legislature, the State Chief Financial Officer or under Subparagraph (23), Mandated Conditions of this Agreement, all obligations on the part of DEO to make any further payment of funds will terminate and the Subrecipient shall submit its administrative closeout report and subgrant agreement closeout package as directed by DEO within thirty (30) calendar days from receipt of notice from DEO.

(h) Subrecipient is ultimately responsible for the administration of this Agreement, including monitoring and oversight of any person or entity retained or hired by Subrecipient.

(i) All expenditures under this Agreement shall be made in accordance with this Agreement and any applicable state or federal statutes, rules, or regulations.

(j) Funding for this Agreement is appropriated under Public Law 115-254, Division I, the "Supplemental Appropriations for Disaster Relief Act, 2018" and Public Law 116-20, the "Additional Supplemental Appropriations for Disaster Relief Act, 2019" for the purpose of assisting in long-term recovery from major disasters that occurred in 2017, 2018, and 2019 in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., (the "Stafford Act").

(k) CDBG-DR funds, appropriated and identified by Public Law, are governed by one or more Federal Register notices that contain requirements, applicable waivers, and alternative requirements that apply to the use of these funds.

(22) REPAYMENTS

(a) Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. Subrecipient shall ensure that its contractors, subcontractors, and consultants only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.

(b) In accordance with Section 215.971, F.S., Subrecipient shall refund to DEO any unobligated funds which have been advanced or paid.

(c) Subrecipient shall refund to DEO any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors or consultants are entitled under the terms and conditions of this Agreement.

(d) Subrecipient shall refund to DEO any funds received for an activity if the activity does not meet one of the three National Objectives listed in 24 CFR § 570.483(b), (c) and (d); provided, however, the Subrecipient is not required to repay funds for subgrant administration unless DEO, in its sole discretion, determines Subrecipient is at fault for the ineligibility of the activity in question.

(e) Subrecipient shall refund to DEO any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to DEO, by the Subrecipient, within thirty (30) calendar days from Subrecipient's receipt of notification of such non-compliance.

(f) In accordance with Section 215.34(2), F.S., if a check or other draft is returned to DEO for collection, the Subrecipient shall pay to DEO a service fee of \$15.00 or five percent of the face amount of the returned check or draft, whichever is greater. All refunds or repayments to be made to DEO under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to DEO at the following address:

Department of Economic Opportunity
Community Development Block Grant Programs Cashier
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

(23) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a DEO request or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations and materials are incorporated herein by reference.

(b) This Agreement shall be construed under the laws of the State of Florida and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. The Parties explicitly waive any right to jury trial.

(c) If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

(d) Any power of approval or disapproval granted to DEO under the terms of this Agreement shall survive the term of this Agreement.

(e) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(f) Subrecipient shall comply with all applicable local, state and federal laws, including the Americans With Disabilities Act of 1990, as amended; the Florida Civil Rights Act, as amended, Chapter 760, Florida Statutes; Title VII of the Civil Rights Act of 1964, as amended; (P.L. 101-336, 42 U.S.C. § 12101 *et seq.*) and laws which prohibit discrimination by public and private entities on in employment, public accommodations, transportation, state and local government services and telecommunications.

(g) Pursuant to Section 287.133(2)(a), F.S., a person or affiliate, as defined in Section 287.133(1), F.S., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the convicted vendor list.

(h) Pursuant to Section 287.134(2)(a), F.S., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract

to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the discriminatory vendor list.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(j) In the event travel is pre-approved by DEO, any bills for travel expenses shall be submitted and reimbursed in accordance with Section 112.061, F.S., the rules promulgated thereunder and 2 CFR § 200.474.

(k) If Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to DEO or be applied against DEO's obligation to pay the Agreement award amount.

(l) Subrecipient acknowledges being subject to Florida's Government in the Sunshine Law (Section 286.011, F.S.) with respect to the meetings of Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. Subrecipient agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

(m) Subrecipient shall comply with section 519 of P. L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(n) Upon expiration or termination of this Agreement, Subrecipient shall transfer to DEO any CDBG-MIT funds remaining at the time of expiration or termination, and any accounts receivable attributable to the use of CDBG-MIT funds.

(24) LOBBYING PROHIBITION

(a) No funds or other resources received from DEO under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Subrecipient certifies, by its signature to this Agreement, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 general 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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. Subrecipient shall require that 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 as described in this Agreement. 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 ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

(25) COPYRIGHT, PATENT AND TRADEMARK

Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by Subrecipient to the State of Florida.

(a) If the Subrecipient has a pre-existing patent or copyright, Subrecipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement expressly provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, Subrecipient shall refer the discovery or invention to DEO for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films or other copyrightable material are produced, Subrecipient shall notify DEO. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Subrecipient to the State of Florida.

(c) Within thirty (30) calendar days of execution of this Agreement, Subrecipient shall disclose all intellectual properties relating to the performance of this Agreement which give rise to a patent or copyright. Subrecipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and DEO shall have the right to all patents and copyrights which accrue during performance of this Agreement.

(26) LEGAL AUTHORIZATION

(a) Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. Subrecipient certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement. DEO may, at its discretion, request documentation evidencing the undersigned has authority to bind Subrecipient to this Agreement as of the date of execution; any such documentation is incorporated herein by reference.

(b) Prior to the execution of this Agreement, Subrecipient warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit, restrain or diminish Subrecipient's ability to satisfy its obligations. Subrecipient shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of this Agreement.

(27) PUBLIC RECORD RESPONSIBILITIES

(a) In addition to Subrecipient's responsibility to directly respond to each request it receives for records, in conjunction with this Agreement and to provide the applicable public records in response to such request, Subrecipient shall notify DEO of the receipt and content of all such requests by sending an email to PRRequest@deo.myflorida.com within one (1) business day from receipt of the request.

(b) Subrecipient shall keep and maintain public records required by DEO to perform the Subrecipient's responsibilities hereunder. Subrecipient shall, upon request from DEO's custodian of

public records, provide DEO with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, F.S., or as otherwise provided by law. Subrecipient shall allow public access to all documents, papers, letters or other materials made or received by the Subrecipient in conjunction with this Agreement, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and Section 119.07(1), F.S. For records made or received by Subrecipient in conjunction with this Agreement, Subrecipient shall respond to requests to inspect or copy such records in accordance with Chapter 119, F.S. For all such requests for records that are public records, as public records are defined in Section 119.011, F.S., Subrecipient shall be responsible for providing such public records per the cost structure provided in Chapter 119, F.S., and in accordance with all other requirements of Chapter 119, F.S., or as otherwise provided by law.

(c) This Agreement may be terminated by DEO for refusal by Subrecipient to comply with Florida's public records laws or to allow public access to any public record made or received by the Subrecipient in conjunction with this Agreement.

(d) If, for purposes of this Agreement, Subrecipient is a "contractor" as defined in Section 119.0701(1)(a), F.S. ("Subrecipient-contractor"), the Subrecipient-contractor shall transfer to DEO, at no cost to DEO, all public records upon completion including termination, of this Agreement or keep and maintain public records required by DEO to perform the service. If Subrecipient-contractor transfers all public records to the public agency upon completion of this Agreement, Subrecipient-contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Subrecipient-contractor keeps and maintains public records upon completion of the Agreement, the Subrecipient-contractor shall meet all applicable requirements for retaining public records in accordance with Chapters 119 and 257, F.S. All records stored electronically must be provided to DEO, upon request from DEO's custodian of public records, in a format that is compatible with the information technology systems of DEO.

(e) If DEO does not possess a record requested through a public records request, DEO shall notify Subrecipient-contractor of the request as soon as practicable, and the Subrecipient-contractor must provide the records to DEO or allow the records to be inspected or copied within a reasonable time, but in all cases within fourteen business days. If the Subrecipient-contractor does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. Subrecipient-contractor who fails to provide public records to DEO within a reasonable time may be subject to penalties under Section 119.10, F.S.

(f) Subrecipient shall notify DEO verbally within twenty-four (24) hours and in writing within seventy-two (72) hours if any data in the Subrecipient's possession related to this Agreement is subpoenaed or improperly used, copied or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. Subrecipient shall cooperate with DEO, in taking all steps as DEO deems advisable, to prevent misuse, regain possession or otherwise protect the State's rights and the data subject's privacy.

(g) Subrecipient acknowledges DEO is subject to the provisions of Chapter 119, F.S., relating to public records and that reports, invoices and other documents Subrecipient submits to DEO under this Agreement constitute public records under Florida Statutes. Subrecipient shall cooperate with DEO regarding DEO's efforts to comply with the requirements of Chapter 119, F.S.

(h) If Subrecipient submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by Subrecipient prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of Chapter 119, F.S., prior to submittal of the record to DEO serves as the Subrecipient's waiver of a claim of exemption. Subrecipient shall ensure public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for

the duration of this Agreement term and following completion of this Agreement if the Subrecipient-contractor does not transfer the records to DEO upon completion, including termination, of this Agreement.

(i) IF SUBRECIPIENT-CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT-CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via email at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

(j) To the extent allowable by law, Subrecipient shall be fully liable for the actions of its agents, employees, partners, contractors and subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Subrecipient, its agents, employees, partners, contractors or subcontractors, provided, however, Subrecipient does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but not the obligation, to enforce this indemnification provision.

(k) DEO does not endorse any Subrecipient, commodity, or service. Subject to Chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Subrecipient's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any other entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives or subcontractors with the professional skills necessary to perform the work services required by the Agreement.

(l) Subrecipient shall comply with the requirements set forth in Section 119.0701, F.S., when entering into any public agency contract for services after the Effective Date of this Agreement. Subrecipient shall amend each of the Subrecipient's public agency contracts for services already in effect as of the Effective Date of this Agreement and which contract will or may be funded in whole or in part with any public funds. DEO may terminate this Agreement if the Subrecipient does not comply with this provision.

(28) EMPLOYMENT ELIGIBILITY VERIFICATION

(a) Section 448.095, F.S., requires the following:

1. Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

2. A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a

person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

(b) E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at:

<https://www.e-verify.gov/>

(c) If the Recipient does not use E-Verify, the Recipient shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the effective date of this Agreement.

(29) PROGRAM INCOME

(a) The Subrecipient shall report to DEO all program income (as defined at 24 CFR § 570.500(a) or in the Federal Register Guidance governing the CDBG-MIT funds) generated by activities carried out with CDBG-MIT funds made available under this Agreement as part of the Subrecipient's Quarterly Progress Report. The Subrecipient shall use program income in accordance with the applicable requirements of 2 CFR part 200, 24 CFR part 570.489, 570.500, 570.504 and the terms of this Agreement.

(b) Program income generated after closeout shall be returned to DEO. Program income generated prior to closeout shall be returned to DEO unless the program income is used to fund additional units of CDBG-MIT activities, specified in a modification to this Agreement and duly executed prior to administrative closeout.

(30) NATIONAL OBJECTIVES

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this Agreement shall meet the following national objectives and satisfy the following criteria:

- (a) Benefit low and moderate income;
- (b) Meet a particularly urgent need;
- (c) Aid in the prevention or elimination of slums or blight.

(31) INDEPENDENT CONTRACTOR

(a) In Subrecipient's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed Subrecipient is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to or shall be deemed to constitute an employer/employee relationship, partnership or joint venture between the Parties. Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Nothing in this Agreement shall be construed to create any agency or employment relationship between DEO Subrecipient, its employees, subcontractors or agents. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

(b) Subrecipient, its officers, agents, employees, subcontractors or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, agent, joint venturer, or partner of the State of Florida.

(c) Subrecipient shall have sole right to control the manner, method and means by which the services required by this Agreement are performed. DEO shall not be responsible to hire, supervise or pay Subrecipient's employees. Neither Subrecipient, nor its officers, agents, employees, subcontractors or assignees are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.

(d) Subrecipient agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, servant, joint venturer or partner of the State of Florida.

(e) Unless justified by the Subrecipient, and agreed to by DEO in the Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial or clerical support) to the Subrecipient or its subcontractor or assignee.

(f) DEO shall not be responsible for withholding taxes with respect to the Subrecipient's use of funds under this Agreement. Subrecipient shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits or employee benefits of any kind. Subrecipient shall ensure that its employees, subcontractors and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

(g) Subrecipient, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

(h) DEO shall not be responsible the provision of any training to Subrecipient, its employees, assigns, agents, representatives or subcontractors in the professional skills necessary to perform the work services required by this Agreement; DEO may provide training in the form of an Implementation Workshop in keeping with implementation

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State of Florida
Department of Economic Opportunity
Federally Funded Subrecipient Agreement
Signature Page

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and, in the attachments and exhibits hereto, the Parties executed this Agreement by their duly authorized undersigned officials.

CITY OF PALM BAY, FLORIDA		DEPARTMENT OF ECONOMIC OPPORTUNITY	
By	<div>Signature Suzanne Sherman</div>	By	<div>Signature Drew Winters</div>
Title	<div>City Manager</div>	Title	<div>Director, Office of Long-Term Resiliency</div>
Date		Date	
Federal Tax ID #	<div>59-6018984</div>		
DUNS #	<div>060236262</div>		

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: _____

Approved Date: _____

Attachment A – Project Description and Deliverables

1. PROGRAM DESCRIPTION: In April 2018, the U.S. Department of Housing and Urban Development (HUD) announced the State of Florida, Department of Economic Opportunity (DEO) would receive \$633,485,000 in funding to support long-term mitigation efforts following declared disasters in 2016 and 2017 through HUD's Community Development Block Grant Mitigation (CDBG-MIT) program. Awards were distributed on a competitive basis targeting HUD designated Most Impacted and Distressed (MID) Areas, primarily addressing the Benefits to Low-to-Moderate Income (LMI) National Objective. Additional information may be found in the Federal Register, Vol. 84, No. 169.

The Florida Department of Economic Opportunity (DEO) has apportioned the Federal Award to include the following initiatives: Critical Facility Hardening Program \$75,000,000; General Planning Support Program \$20,000,000; General Infrastructure Program \$475,000,000; and State Planning and Administration \$63,485,000.

This award has been granted under the **Critical Facility Hardening Program**. Projects eligible for funding under this program must harden critical buildings that serve a public safety purpose for local communities. Critical buildings include:

- Potable water facilities
- Wastewater facilities
- Police departments
- Fire departments
- Hospitals
- Emergency operation centers
- Emergency shelters

2. PROJECT DESCRIPTION: The City of Palm Bay has been awarded Eighty Thousand One Hundred Eighty Seven Dollars and Zero Cents (\$80,187.00) in CDBG-MIT (Community Development Block Grant – Mitigation) funding for mitigation efforts to harden the Palm Bay Police Substation located at 1575 Main St NE, Palm Bay, Florida through replacement of an emergency generator and hurricane window shutters. This project will be completed under the Low-to-Moderate Income (LMI) National Objective as the area of benefit consists of 56.27% low to moderate income residents.

3. SUBRECIPIENT RESPONSIBILITIES:

- A. Complete and submit to DEO within thirty (30) days of Agreement execution a staffing plan which must be reviewed and approved by the DEO Grant Manager prior to implementation. Should any changes to the staffing plan be deemed necessary, an updated plan must be submitted to DEO for review and approval. The Staffing plan must include the following:
 1. Organizational Chart; and
 2. Job descriptions for Subrecipient's employees, contracted staff, vendors, and contractors.
- B. Develop and submit a copy of the following policies and procedures to the DEO Grant Manager for review and approval within thirty (30) days of Agreement execution. The DEO Grant Manager will provide approval in writing prior to the policies and procedures being implemented.
 1. Procurement policies and procedures that incorporate 2 CFR Part 200.317-326.
 2. Administrative financial management policies, which must comply with all applicable HUD CDBG-MIT and State of Florida rules.
 3. Quality assurance and quality control system policies and procedures that comply with all applicable HUD CDBG-MIT and DEO policies.

4. Policies and procedures to detect and prevent fraud, waste and abuse that describe how the Subrecipient will verify the accuracy of applicant information, monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring policy, and which items will be monitored, and procedures for referring instances of fraud, waste and abuse to HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email hotline@hudoig.gov).
5. Policies and procedures for the requirements under 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award.
- C. Attend fraud related training offered by HUD OIG to assist in the proper management of the CDBG-MIT grant funds when available.
- D. Upload required documents into a system of record provided by DEO.
- E. Complete and submit an updated Project Detail Budget (Attachment B) for review and approval by DEO no later than thirty (30) days after Agreement execution. Any changes to the Project Detail Budget must be submitted in the monthly report submitted to DEO for review and approval by the DEO Grant Manager.
- F. Maintain organized Subrecipient agreement files and make them accessible to DEO or its representatives upon request.
- G. Comply with all terms and conditions of the Subrecipient Agreement, Mitigation Program Guidelines, Action Plans, Action Plan amendments, and Federal, State, and local laws.
- H. Provide copies of all proposed procurement documents to DEO ten (10) days prior to posting as detailed in Attachment D of Subrecipient Agreement. The proposed procurement documents will be reviewed and approved by DEO Grant Manager. Should the procurement documents require revisions based on state or federal requirements, Subrecipient will be required to postpone procurement and submit revised documents for review and approval.
- I. Complete procurement of all applicants for internal grants management and compliance and direct program and product production, including:
 1. Selection of applicants, subrecipients and/or staff that will be responsible for managing applicant intake and related operations, compliance, finance, and administration.
 2. Selection of applicants, subrecipients and/or staff that will be responsible for appraisal, environmental review, title services and legal services.
 3. Copies of all contracts that will be executed by Subrecipient. Contracts must be provided to DEO prior to execution as detailed in Attachment D. Any contract executed by Subrecipient must follow the terms and conditions set forth in this Agreement. Should the submitted contract require necessary additions and/or changes, DEO's Contract Manager will contact Subrecipient regarding changes. Subrecipient is required to submit the updated contract within thirty (30) days. Should the contract not be submitted in a timely manner, Subrecipient will be required to complete the selection process once more.
- J. Ensure all projects seeking assistance under the current CDBG-MIT funds, and any future funds allocated for Mitigation, provided by DEO, receive the required Environmental Clearance from DEO prior to Subrecipient being able to commit CDBG-MIT funds.
- K. Provide the following documentation to DEO within ten (10) calendars after the end of each month:
 1. A revised detail report measuring the actual cost versus the project cost.
 2. An updated Attachment C which documents any changes to the project progress along with justification for the revision.
- L. Develop and submit to DEO a monthly revised detailed timeline for implementation consistent with the milestones outlined in the Mitigation Program Guidelines and report actual progress against the projected progress ten (10) calendar days after the end of each month.
- M. Provide the following information on a quarterly basis within ten (10) calendar days of the end of each quarter:
 1. Submit updated organization chart on a quarterly basis with quarterly report.

2. If staffing changes, there must be a submittal stating the names, job descriptions, on the monthly report deadline.
3. A progress report documenting the following information:
 - a. Accomplishments within the past quarter;
 - b. Issues or risks that have been faced with resolutions; and
 - c. Projected activities to be completed within the following quarter.
- N. Subrecipient shall adhere to the deadlines for the project as agreed upon in the Attachment C – Activity Work Plan. If Subrecipient is unable to meet a deadline within thirty (30) calendar days of the due date, Subrecipient shall request an extension of such deadline from DEO in writing at least thirty (30) business days prior to the deadline. Deadlines shall not be extended outside of the term of this Agreement except by a formal amendment executed in accordance with Section (5) Modification of Agreement.
- O. Close out report will be no later than sixty (60) calendar days after this Agreement ends or is otherwise terminated.

4. ELIGIBLE TASKS AND DELIVERABLES:

- A. Deliverable No. 1 – Replace existing generator at the City of Palm Bay Police Substation.

Subrecipient shall remove and replace existing emergency generator

- 1) Utilizing current local purchasing requirements, in compliance with HUD guidelines, and prior approval of assigned DEO Grant Manager, procure emergency generator sufficient to power the entire facility at 100% for a minimum of 72 hours.
- 2) Remove and properly dispose of existing generator in accordance with local and international building codes.
- 3) Install generator, ensuring code enforcement approval and acceptance of performance in accordance with purchasing agreement.
- 4) After acceptance and payment to vendor, submit invoice and documentation for reimbursement through SERA.

- B. Deliverable No. 2 – Install permanent hurricane window shutters at the City of Palm Bay Police Substation.

Subrecipient shall remove existing hurricane shutters and replace with permanent roll down shutters.

- 1) Utilizing current local purchasing requirements, in compliance with HUD guidelines, and prior approval of assigned DEO Grant Manager, procure permanent hurricane shutters for all windows and external entrances.
- 2) Remove and properly dispose of existing hurricane shutters in accordance with local and international building codes.
- 3) Install hurricane shutters, ensuring code enforcement approval and acceptance of performance in accordance with purchasing agreement.
- 4) After acceptance and payment to vendor, submit invoice and documentation for reimbursement through SERA.

5. DEO RESPONSIBILITIES:

- A. Monitor the ongoing activities of Subrecipient to ensure all activities are being performed in accordance with the Agreement to the extent required by law or deemed necessary by DEO in its discretion
- B. Assign a Grant Manager as a point of contact for Subrecipient
- C. Review Subrecipient's invoices described herein and process them on a timely basis

D. DEO shall monitor progress, review reports, conduct site visits, as DEO determines necessary at DEO's sole and absolute discretion, and process payments to Subrecipient

6. DELIVERABLES:

Subrecipient agrees to provide the following services as specified:

Deliverable No. 1 – Replace existing generator at the City of Palm Bay Police Substation		
TASKS	MINIMUM LEVEL OF SERVICE	FINANCIAL CONSEQUENCES
Subrecipient shall complete tasks as detailed in Section 4.A of this Scope of Work .	Subrecipient may request reimbursement upon completion of tasks listed in 4.A of this Scope of Work as evidenced by submittal of the following documentation: 1) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable.
Deliverable No. 1 Cost: \$71,574.00		
Deliverable No. 2 – Install permanent hurricane window shutters at the City of Palm Bay Police Substation.		
TASKS	MINIMUM LEVEL OF SERVICE	FINANCIAL CONSEQUENCES
Subrecipient shall complete tasks as detailed in Section 4.B of this Scope of Work..	Subrecipient may request reimbursement upon completion of tasks listed in 4.B of this Scope of Work as evidenced by submittal of the following documentation: 1) Invoice package in accordance with Section 7 of this Scope of Work.	Failure to complete the Minimum Level of Service as specified shall result in non-payment for this deliverable.
Deliverable No. 2 Cost: \$8,613.00		
Total Project Costs Not to Exceed: \$80,187.00		

COST SHIFTING: The deliverable amounts specified within the Deliverables table above are established based on the Parties' estimation of sufficient delivery of services fulfilling grant purposes under the Agreement in order to designate payment points during the Agreement Period; however, this is not intended to restrict DEO's ability to approve and reimburse allowable costs Subrecipient incurred providing the deliverables herein. Prior written approval from DEO's Agreement Manager is required for changes to the above Deliverable amounts that do not exceed **10%** of each deliverable total funding amount. Changes that exceed **10%** of each deliverable total funding amount will require a formal written amendment request from Subrecipient, as described in **MODIFICATION** section of the Agreement. Regardless, in no event shall DEO reimburse costs of more than the total amount of this Agreement.

7. INVOICE SUBMITTAL

DEO shall reimburse Subrecipient in accordance with Section 6, above. In accordance with the Funding Requirements of s. 215.971(1), F.S. and Section 21 of this Agreement, Subrecipient and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during this Agreement. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State

Expenditures

(<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>).

- A. Subrecipient shall provide one invoice for services rendered during the applicable period of time as defined in the deliverable table. In any month no deliverable has been completed, the subrecipient will provide notice that no invoicing will be submitted.
- B. The following documents shall be submitted with the itemized invoice:
 - 1. A cover letter signed by Subrecipient's Agreement Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 5, DELIVERABLES, of this Attachment A; (3) have been paid; and (4) were incurred during this Agreement.
 - 2. Subrecipient's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;
 - 3. A certification by a licensed professional using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.
 - 4. Photographs of the project in progress and completed work;
 - 5. A copy of all supporting documentation for vendor payments;
 - 6. A copy of the bank statement that includes the cancelled check or evidence of electronic funds transfer. The State may require any other information from Subrecipient that the State deems necessary to verify that the services have been rendered under this Agreement.
- C. Subrecipient's invoice and all documentation necessary to support payment requests must be submitted into DEO's Subrecipient Management Reporting Application (SERA). Further instruction on SERA invoicing and reporting, along with a copy of the invoice template, will be provided upon execution of the Agreement.

~ Remainder of this page is intentionally left blank ~

Attachment B – Project Budget (Example)

Subrecipient: _____

Contract
Number: _____Modification
Number: _____

Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-MIT Amount	Other Funds	Source*	Total Funds
1. Housing Program - Homeowner Service Project (<i>Example Activities</i>)													
	Home Repair												
	Reconstruction												
	Replacement of Manufactured Homes												
	Temporary Rental and Mortgage Assistance												
	Buyout / Acquisition for Redevelopment												
2. Housing Program - Supportive Housing Initiative PUD Rental Housing Project (<i>Example Activities</i>)													
3. Public Facilities Program – Unified Service Center (<i>Example Activities</i>)													
4. Infrastructure Program (<i>Example Activities</i>)													
	Armstrong Drainage Project												
	Hastings Phase I Sewer												
	Hastings Phase II Sewer												

	Oyster Creek Basin Improvements												
	Orange Street Drainage												
	Avenue D Drainage												
	St. Augustine - Lake Maria Sanchez HMGP Match Drainage												
	St. Augustine Blvd & Cypress Rd Drainage												
5.	Administration												
6.	Planning												
	Totals:												

***Show the sources and amounts of Other Funds needed to complete the project below, including local funds, grants from other agencies and program income.**

Source of Other Funds	Amount
1.	
2.	
3.	
4.	

Attachment C – Activity Work Plan (Example)

Subrecipient _____ Activity: _____ Project Budget: _____

Contract Number: _____ Date Prepared: _____ Modification Number: _____

Start Date (month /year)	End Date (month /year)	Describe Proposed Action	Activity	Description	Deliverable	Associated Task	CDBG-MIT Funding	Local/Match Funding	Estimated Funds by End Date

Attachment D – Program and Special Conditions

1. The Subrecipient shall demonstrate that progress is being made in completing project activities in a timely fashion pursuant to the activity work plan. If the Subrecipient does not comply with the activity work plan schedule, a justification for the delay and a plan for timely accomplishment shall be submitted to DEO within 21 calendar days of receiving DEO's request for justification for the delay. Any project for which the Subrecipient has not completed the activities listed in the Activity Work Plan may be rescinded unless DEO agrees that the Subrecipient has provided adequate justification for the delay.
2. The Subrecipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the budget/activity line items as defined in the Project Detail Budget and Activity Work Plan.
3. The Subrecipient shall request DEO's approval for all professional services contracts and/or agreements that will be reimbursed with CDBG-MIT funds. Copies of the following procurement documents must be provided to DEO for review:
 - a. When publication of a Request for Proposal (RFP) is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
 - b. DEO will either approve the procurement or notify the Subrecipient that the procurement cannot be approved because it violates State, Federal or local procurement guidelines. The Subrecipient shall notify DEO in writing no later than 90 calendar days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG-MIT funds to pay for professional services.
4. Prior to the obligation or disbursement of any funds, except for administrative expenses and not to exceed \$5000, the Subrecipient shall complete the following:
 - a. Submit for DEO's approval the documentation required in paragraph 3 above for any professional services contract. The Subrecipient proceeds at its own risk if more than the specified amount is incurred before DEO approves the procurement. If DEO does not approve the procurement of a professional services contract, the local government will not be able to use CDBG-MIT funds for that contract beyond \$5,000.
 - b. Comply with 24 CFR part 58 and the regulations implementing the National Environmental Policy Act, 40 CFR §§ 1500-1508. When the Subrecipient has completed the environmental review process, it shall submit a Request for Release of Funds and Certification. DEO will issue an Authority to Use Grant Funds (form HUD-7015.16) when this condition has been fulfilled to the satisfaction of DEO. If DEO has not issued an Authority to use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process. **SUBRECIPIENT SHALL NOT BEGIN CONSTRUCTION BEFORE DEO HAS ISSUED THE "AUTHORITY TO USE GRANT FUNDS."**
5. The Subrecipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655; hereinafter, the "URA"), implementing regulations at 24 CFR part 42, 49 CFR part 24 and 24 CFR § 570.606(b), the requirements of 24 CFR § 42.325 – 42.350 governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5304(d)), and the requirements in 24 CFR § 570.606(d), governing optional relocation assistance policies.
6. If the Subrecipient undertakes any activity subject to the URA, the Subrecipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can

determine whether remedial action may be needed. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project.

7. The Subrecipient shall timely submit completed forms for all prime and subcontractors as required by this Agreement, DEO, HUD, and applicable, regulations and guidance laws, specifically including but not limited to:
 - a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
 - b. Section 3 Participation Report (Construction Prime Contractor);
 - c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor), (if applicable); and
 - d. Section 3 Participation Report (Construction Subcontractor), (if applicable).
8. In addition, each construction contract or agreement for new or replacement housing must contain language that requires the contractor to meet the Green Building Standard for Replacement and New Construction of Residential Housing, as defined in the Allocation notice published in the Federal Register Volume 81, Number 224 on Monday, November 21, 2016.
9. For each Request for Funds (RFF) that includes reimbursement of construction costs, the Subrecipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by DEO, signed by the contractor and inspection engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by DEO. For each RFF that includes construction costs, the Subrecipient shall provide a copy of AIA form G702, or a comparable form approved by DEO, if applicable, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by DEO, if applicable.
10. For each project, when the Subrecipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
 - a. Notice to Proceed;
 - b. The contractor's performance bond (100 percent of the contract price); and
 - c. The contractor's payment bond (100 percent of the contract price).
11. The Subrecipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 CFR § 570.487(b).
12. The Subrecipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG-MIT funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Subrecipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 CFR § 570.505. Any future change of use of real property shall be in accordance with 24 CFR § 570.489(j).
13. The Subrecipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 CFR part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 CFR 67, and Guidelines for Rehabilitating Historic Buildings.
14. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Subrecipient shall update and submit Form HUD 2880 to DEO within thirty (30) calendar days of the Subrecipient's knowledge of changes in situations which would require that updates be prepared. The Subrecipient must disclose:
 - a. All developers, contractors, consultants and engineers involved in the application or in the planning, development or implementation of the project or CDBG- MIT-funded activity; and

- b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or 10 percent of the grant, whichever is less.
- 15. If required, the Subrecipient shall submit a final Form HUD 2880, to DEO with the Subrecipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
- 16. Conflicts of interest relating to procurement shall be addressed pursuant to 24 CFR § 570.489(g). Title 24 CFR § 570.489(h) shall apply in all conflicts of interest not governed by 24 CFR § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG-MIT financial assistance to beneficiaries, businesses or other third parties; or any other financial interest, whether real or perceived. Additionally, the Subrecipient agrees to comply with, and this Agreement is subject to, Chapter 112 F.S.
- 17. Any payment by the Subrecipient using CDBG-MIT funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG-MIT funds.
- 18. The Subrecipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.
- 19. If an activity is designed by an engineer, architect or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

Attachment E – State and Federal Statutes, Regulations, and Policies

The CDBG-MIT funds available to the Subrecipient through this agreement constitute a subaward of DEO's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of DEO's Federal award that are imposed on the Subrecipient and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

The Subrecipient agrees to, and, by signing this Agreement, certifies that, it will comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register Guidance Vol. 84, No. 169/Friday, August 30, 2019/Notices, Vol. 81, No. 224/Monday, November 21, 2016/Notices, Volume 83, No. 28/Friday, February 9, 2018/Notices, Volume 82, No. 11/Wednesday, January 18, 2017/Notices, Volume 82, No. 150/Monday, August 7, 2017/Notices, and Vol. 83, No. 157/Tuesday, August 14, 2018/Notices. Notwithstanding the foregoing, (1) the Subrecipient does not assume any of DEO's responsibilities for environmental review, decision-making and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations and policies as now in effect and as may be amended from time to time that govern the use of the CDBG-MIT funds in complying with its obligations under this agreement, regardless of whether CDBG-MIT funds are made available to the Subrecipient on an advance or reimbursement basis.

The Subrecipient also agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available. The Subrecipient further agrees to comply with all other applicable Federal, State, and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to the following:

1. State of Florida Requirement

State of Florida Requirements are stated throughout this Agreement and Attachments thereto.

2. Audits, Inspections and Monitoring

a. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

b. Inspections and Monitoring

The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 CFR part 200.

The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement.

This review must include:

- (1) Reviewing financial and performance reports required by DEO;
- (2) Following up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO detected through audits, on-site reviews, and other means; and
- (3) Issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 CFR §200.521.

c. Corrective Actions

The Subrecipient shall be subject to reviews and audits by DEO, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2). DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site. DEO may impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

3. Drug-Free Workplace

Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

4. Procurement and Contractor Oversight

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.327 when procuring property and services under this agreement. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities, specifically including, 24 CFR 570.609 or 24 CFR 570.489, as applicable. CDBG funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement. To check for debarred or suspended entities, please visit <https://www.sam.gov/SAM/>

5. Property Standards

Real property acquired by the Subrecipient under this agreement shall be subject to 24 CFR 570.489(j) and 24 CFR 570.200(j). The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to DEO for its CDBG-MIT program or shall be retained after compensating DEO.

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

6. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM, <https://www.sam.gov/SAM/> in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number <https://fedgov.dnb.com/webform/>. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

7. Relocation and Real Property Acquisition

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the URA shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

8. Non-discrimination

a. 24 CFR Part 6

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-MIT funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

b. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995 and meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

c. State and Local Nondiscrimination Provisions

The Subrecipient must comply with the Florida Small and Minority Business Assistance Act (§§ 288.703-288.706, F.S.); Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

(1) General Compliance

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under 24 CFR part 1. The identity of complainants shall

be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(2) Assurances and Real Property Covenants

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives DEO and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-MIT funds and provided to the Subrecipient under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

d. Affirmative Action

(1) Approved Plan

The Subrecipient agrees that it shall carry out pursuant to DEO's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR 60. DEO shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(2) Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.

(3) Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

9. Labor and Employment

Labor Standards

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to DEO for review upon request.

10. Section 3 of the Housing and Urban Development Act of 1968

a. Low-Income Person Definition

A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or (ii) A very low-income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

b. Compliance

Subrecipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 75 (formerly 24 CFR part 135). Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, a subrecipient of Section 3-covered assistance is required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations. Subrecipient and any of its contractors and subcontractors shall include the following "Section 3 clause" in every "Section 3-covered contract":

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (2) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants

for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.F. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (6) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

c.. Section 3 Benchmarks and Reporting

- A. Benchmarks. Contracts over \$200,000 trigger Section 3 Benchmark requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents and business concerns to meet these *minimum* numeric goals:
 1. Twenty-five percent (25%) of the total hours on a Section 3 project must be worked by Section 3 workers; and
 2. Five percent (5%) of the total hours on a Section 3 project must be worked by Targeted Section 3 workers.
- B. Reporting. If the subrecipient's reporting indicates that the subrecipient has not met the Section 3 benchmarks described in 24 CFR § 75.23, pursuant to 24 CFR § 75.25(b), the subrecipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued.
- C. Recipient will comply with any Section 3 Project Implementation Plan documents provided by HUD or DEO which may be amended from time to time for HUD reporting purposes.

11. Conduct

a. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

b. Conflict of Interest

In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in DEO's procurement policies and procedures. In all cases not governed by the conflict of interest provisions in DEO's procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

c. Lobbying Certification

The Subrecipient hereby certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (3) The language of paragraph (i) through (iv) 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; and
- (4) 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 required by section 1352, title 31, U.S.C. 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.

d. Religious Activities

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

Equal Treatment for Faith-Based Organizations. Prohibits any State or local government receiving funds under any Department program, or any intermediate organization with the same duties as a governmental entity, from discriminating for or against an organization on the basis of the organization's religious character or affiliation. Prohibits religious organizations from engaging in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance.

Prohibits an organization that participates in programs funded by direct financial assistance from the Department, in providing services, from discriminating against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

e. Environmental Conditions(1) Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-making and action (see 24 CFR part 58) and is not delegated DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. If DEO has not issued an Authority to Use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process.

(2) Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- (a) Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and
- (b) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

- (c) The Clean Air and Water Act: If this Contract is in excess of \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act, as amended, 42 U.S.C. 7401, Section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, et seq., Executive Order 11738 and Environmental Protection Agency regulations. Contractor shall report any violation of the above to DEO.
- (d) Energy Efficiency: Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163.
- (3) Flood Disaster Protection
The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-MIT award and listed at the beginning of this Attachment.
- (4) Lead-Based Paint
The Subrecipient shall follow DEO's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.
- (5) Historic Preservation
The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

- (6) Additional Regulations
 - (a) The Temporary Assistance for Needy Families Program ("TANF"), 45 CFR Parts 260-265, the Social Services Block Grant ("SSBG"), 42 U.S.C. 1397d, and other applicable federal regulations and policies promulgated thereunder.
 - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, *et seq.*, which prohibits discrimination on the basis of sex in educational programs.
 - (c) Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
 - (d) The Pro-Children Act: Contractor agrees to comply with the Pro-Children Act of 1994, 20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub-contracts. In compliance with Public Law (Pub. L.) 103-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.
 - (e) Public Announcements and Advertising: When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, Contractor shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project

or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

- (f) Purchase of American-Made Equipment and Products: Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement will be American-made.
- (g) The Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117), which prohibits distribution of federal funds made available under the Act to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.
- (h) Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333) — If this Contract involves federal funding in excess of \$2,000 for construction contracts or in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5) is required. Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (i) Resource Conservation and Recovery Act (RCRA). Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.
- (j) Immigration Reform and Control Act. Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, which requires employment verification and retention of verification forms for any individuals hired who will perform any services under the contract.

When it is determined that the Subrecipient is in non-compliance with federal or state program requirements, the State may impose any of the additional conditions and/or requirements outlined in 2 CFR § 200.207.

Attachment F – Civil Rights Compliance

Fair Housing

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will "affirmatively further fair housing" in its community. A Subrecipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

Each Subrecipient shall do the following:

1. Have in place a fair housing resolution or ordinance that covers all Federally protected classes (race, color, familial status, handicap, national origin, religion and sex);
2. Designate an employee as the Fair Housing Coordinator who is available during regular business hours to receive fair housing calls;
3. Publish the Fair Housing Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask fair housing questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website;
4. Establish a system to record the following for each fair housing call:
 - a) The nature of the call,
 - b) The actions taken in response to the call,
 - c) The results of the actions taken and
 - d) If the caller was referred to another agency, the results obtained by the referral agency;
5. Conduct at least one fair housing activity each quarter. Identical activities (see examples below) shall not be conducted in consecutive quarters; and
6. Display a fair housing poster in the CDBG-MIT Office. (This does not count as a fair housing activity.)

The Subrecipient shall ensure that the fair housing contact person has received training so that he/she can handle fair housing phone inquiries or refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

1. Define where discriminatory practices are occurring,
2. Help the community measure the effectiveness of its outreach efforts, and
3. Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

1. Making fair housing presentations at schools, civic clubs and neighborhood association meetings;
2. Conducting a fair housing poster contest or an essay contest;
3. Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales and church festivals; and
4. Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents and apartment complex owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity; however, mailing a DEO-approved fair housing brochure as an insert with utility bills will be accepted as an activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

The Subrecipient shall document its fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG-MIT project file and include information about the activities in the comment section of each quarterly report.

Equal Employment Opportunity

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-MIT funds will abide by the Equal Employment Opportunity (EEO) Laws of the United States. A Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each Subrecipient shall do the following:

1. Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors, subcontractors, subrecipients and consultants from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age or genetics;
2. Designate an employee as the EEO Coordinator who is available during regular business hours to receive EEO calls;
3. Publish the EEO Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask EEO questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each EEO call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and
 - c) The results of the actions taken;
5. Each Subrecipient shall maintain a list of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The Subrecipient shall use this list to solicit companies to bid on CDBG-MIT-funded construction activities and shall provide a copy of the list to the prime contractor(s) to use when it hires subcontractors and consultants. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list at the following website: <https://osd.dms.myflorida.com/directories>.
6. Incorporate the Equal Employment Opportunity clause set forth in 41 CFR Part 60-1.4(b) into any contracts or subcontracts that meet the definition of "federally assisted construction contract" in 41 CFR 60-1.3.

Section 504 and the Americans with Disabilities Act (ADA)

As a condition for the receipt of CDBG-MIT funds, the Subrecipient must certify that it provides access to all federally funded activities to all individuals, regardless of handicap. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

The Subrecipient shall do the following:

1. Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who:
 - a) Has a physical or mental impairment which substantially limits one or more major life activities,
 - b) Has a record of such an impairment or
 - c) Is regarded as having such an impairment;
2. Designate an employee as the Section 504/ADA Coordinator who is available during regular business hours to receive Section 504/ADA calls;
3. Publish the Section 504/ADA Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask Section 504/ADA questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4. Establish a system to record the following for each Section 504/ADA call:
 - a) The nature of the call,
 - b) The actions taken in response to the call and

- c) The results of the actions taken.

Section 504 prohibitions against discrimination (see 45 CFR part 84) apply to service availability, accessibility, delivery, employment and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:

1. Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits,
2. Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
3. Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.

The ADA regulations (Title II, 28 CFR part 35, and Title III, 28 CFR part 36) prohibit discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Section 3 - Economic Opportunities for Low- and Very Low-Income Persons

Each Subrecipient shall encourage its contractors to hire qualified low- and moderate-income residents for any job openings that exist on CDBG-MIT-funded projects in the community. The Subrecipient and its contractors shall keep records to document the number of low- and moderate-income people who are hired to work on CDBG-MIT-funded projects. The number of low- and moderate-income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following Section 3 clause is required to be included in CDBG-MIT-funded contracts of \$100,000 or more:

Section 3 Clause

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are Subrecipients of HUD assistance for housing.
2. The Parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the

notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
6. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Civil Rights Regulations

As a condition for the receipt of CDBG-MIT funds, each Subrecipient must certify that it will abide by the following Federal laws and regulations:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 CFR § 570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 CFR § 570.490(b) – Unit of general local government's record;
6. 24 CFR § 570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of or subjected to discrimination under any program or activity receiving CDBG-MIT funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 CFR part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Equal Employment Opportunity; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

I hereby certify that _____ shall comply with all of the provisions and Federal regulations listed in this Attachment F.

By: _____ **Date:** _____

Name: _____

Title: _____

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Attachment G – Reports

The following reports must be completed and submitted to DEO in the time frame indicated below. Failure to timely file these reports constitutes an Event of Default, as defined in Paragraph (10) Default, of this Agreement.

1. **Monthly Progress Report** must be submitted to DEO ten (10) calendar days after the end of each month.
2. A **Quarterly Progress** Report must be submitted to DEO on forms to be provided by DEO no later than the 10th of every April, July, October and January.
3. A **Contract and Subcontract Activity** form, Form HUD-2516, currently available at https://www.hud.gov/sites/documents/DOC_36660; which is incorporated herein by reference, must be submitted by April 15 and October 15 each year through the DEO's SERA reporting system. The form must reflect all contractual activity for the period, including Minority Business Enterprise and Woman Business Enterprise participation. If no activity has taken place during the reporting period, the form must indicate "no activity".

The Subrecipient shall closeout its use of the CDBG-MIT funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to the Subrecipient) and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG-MIT funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-MIT funds. Further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG-MIT funds (including CDBG-MIT funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

4. In accordance with 2 CFR part 200, should the Subrecipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with 2 CFR part 200 and submitted to DEO no later than nine months from the end of the Subrecipient's fiscal year. If the Subrecipient did not meet the audit threshold, an **Audit Certification Memo** must be provided to DEO no later than nine months from the end of the Subrecipient's fiscal year.
5. A copy of the **Audit Compliance Certification** form, Attachment J, must be emailed to audit@deo.myflorida.com within sixty (60) calendar days of the end of each fiscal year in which this subgrant was open.
6. The **Section 3 Summary Report**, form HUD-60002, must be completed and submitted through DEO's SERA reporting system by July 31, annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.
7. Request for Funds must be submitted as required by DEO and in accordance with the ***Project Description and Deliverables, Project Detail Budget and Activity Work Plan***.
8. All forms referenced herein are available online or upon request from DEO's grant manager for this Agreement.

Attachment H – Warranties and Representations

Financial Management

The Subrecipient's financial management system must comply with the provisions of 2 CFR part 200 (and particularly 2 C.F.R 200.302 titled "Financial Management"), Section 218.33, F.S., and include the following:

1. Accurate, current and complete disclosure of the financial results of this project or program.
2. Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
3. Effective control over and accountability for all funds, property and other assets. The Subrecipient shall safeguard all assets and assure that they are used solely for authorized purposes.
4. Comparison of expenditures with budget amounts for each Request for Funds (RFF). Whenever appropriate, financial information should be related to performance and unit cost data.
5. Written procedures to determine whether costs are allowed and reasonable under the provisions of the 2 CFR part 200 (and particularly 2 CFR 200 Subpart E titled "Costs Principles") and the terms and conditions of this Agreement.
6. Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions must follow the provisions of 2 CFR §§ 200.318-200.327 and be conducted in a manner providing full and open competition. The Subrecipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements. Awards must be made to the responsible and responsive bidder or offeror whose proposal is most advantageous to the program, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Subrecipient. Any and all bids or offers may be rejected if there is a sound, documented reason.

Codes of Conduct

The Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents of the Subrecipient. (*See* 2 CFR § 200.318(c)(1).)

Business Hours

The Subrecipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

Licensing and Permitting

All contractors or employees hired by the Subrecipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Subrecipient.

Attachment I – Audit Requirements

The administration of resources awarded by DEO to the Subrecipient may be subject to audits and/or monitoring by DEO as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F - Audit Requirements, and section 215.97, F.S., as revised (see “AUDITS” below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by DEO staff to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED. This part is applicable if the Subrecipient is a state or local government or nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A Subrecipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through DEO by this agreement. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the Subrecipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the Subrecipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A Subrecipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the Subrecipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Subrecipient resources obtained from other than federal entities).

PART II: STATE FUNDED. This part is applicable if the Subrecipient is a non-state entity as defined by Section 215.97(2), F.S.

1. In the event that the Subrecipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Subrecipient (for fiscal years ending June 30, 2017, and thereafter), the Subrecipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the Subrecipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting

package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the Subrecipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Subrecipient's resources obtained from other than state entities).

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), F.S., State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, F.S. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

N/A

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR § 200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR § 200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the Subrecipient directly to each of the following:

- a. DEO at each of the following addresses:

Electronic copies (preferred): or
Audit@deo.myflorida.com

Paper (hard copy):
 Department Economic Opportunity
 MSC # 75, Caldwell Building
 107 East Madison Street
 Tallahassee, FL 32399-4126

- b. The Auditor General's Office at the following address:

Auditor General
 Local Government Audits
 342 Claude Pepper Building, Room 401
 111 West Madison Street
 Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or the management letter required by Part III of this form shall be submitted by or on behalf of the Subrecipient directly to:

Electronic copies (preferred):

Audit@deo.myflorida.com

or

Paper (hard copy):

Department Economic Opportunity

MSC # 75, Caldwell Building

107 East Madison Street

Tallahassee, FL. 32399-4126

4. Any reports, management letters, or other information required to be submitted DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Subrecipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION. The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or six (6) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The Subrecipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of six (6) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

Exhibit 1 to Attachment I – Funding Sources

Federal Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:

Federal Awarding Agency:	U.S. Department of Housing and Urban Development
Federal Funds Obligated to Subrecipient:	\$80,187.00
Catalog of Federal Domestic Assistance Title:	Community Development Block Grants/State’s Program and Non-Entitlement Grants in Hawaii
Catalog of Federal Domestic Assistance Number:	14.228
Project Description:	Funding is being provided for mitigation efforts to harden the Palm Bay Police Substation through replacement of emergency generator and hurricane window shutters.

This is not a research and development award.

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

Federal Program

- 1. The Subrecipient shall perform its obligations in accordance with Sections 290.0401- 290.048, F.S.
- 2. The Subrecipient shall perform its obligations in accordance with 24 CFR §§ 570.480 – 570.497.
- 3. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
- 4. The Subrecipient shall perform the obligations in accordance with chapter 73C-23.0051(1) and (3), F.A.C.
- 5. The Subrecipient shall be governed by all applicable laws, rules and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient’s Notice of Subgrant Award/Fund Availability (NFA).

State Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following: N/A

Matching Resources for Federal Programs: N/A

Subject to Section 215.97, Florida Statutes: N/A

Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows: N/A

NOTE: Title 2 CFR § 200.331 and Section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 and the Notice of Subgrant Award/Fund Availability be provided to the Subrecipient.

Attachment J – Audit Compliance Certification

Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.

Subrecipient:

FEIN:

Subrecipient's Fiscal
Year:

Contact Name:

Contact's Phone:

Contact's Email:

1. Did the Subrecipient expend state financial assistance, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and the Department of Economic Opportunity (DEO)? ☐ Yes ☐ No

If the above answer is yes, answer the following before proceeding to item 2.

Did the Subrecipient expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of Section 215.97, Florida Statutes and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and DEO? ☐ Yes ☐ No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did the Subrecipient expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ☐ Yes ☐ No

If yes, the Subrecipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR part 200, subpart F, as revised.

By signing below, I certify, on behalf of the Subrecipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

Attachment K – Subrecipient Enterprise Resource Application (SERA) Form

Attachment K will be provided after execution of this Agreement

Attachment L

2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to

construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See 200.323 - Procurement of Recovered Materials.

(K) See 200.216 - Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See 200.322 – Domestic Preferences for procurements.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Attachment M

**State of Florida
Department of Economic Opportunity**

**Federally Funded
Community Development Block Grant
Disaster Recovery (CDBG-MIT) Subrogation Agreement**

This Subrogation and Assignment Agreement (“Agreement”) is made and entered into by and between the City of Palm Bay, Florida(hereinafter referred to as “Subrecipient”) and the State of Florida, Department of Economic Opportunity (hereinafter referred to as “DEO”).

In consideration of Subrecipient’s receipt of funds or the commitment by DEO to evaluate Subrecipient’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the DEO Community Development Block Grant-Mitigation Program (the “CDBG-MIT Program”) administered by DEO, Subrecipient hereby assigns to DEO all of Subrecipient’s future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-MIT Program and that are determined in the sole discretion of DEO to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds, Subrecipient agrees to immediately notify DEO who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to DEO, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to DEO shall not exceed the amount received from the CDBG-MIT Program.

Subrecipient agrees to assist and cooperate with DEO to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO. Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by DEO, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to DEO, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-MIT Program, the Policies, any amounts received under the Mitigation Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

Subrecipient explicitly allows DEO to request of any company with which Subrecipient held insurance policies, or FEMA or the SBA or any other entity from which Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by DEO to monitor/enforce its interest in the rights assigned to it under this Agreement and give Subrecipient's consent to such company to release said information to DEO.

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to DEO, if Subrecipient received Grant Proceeds under the CDBG-MIT Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to DEO, and DEO will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by DEO.
2. If the Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by DEO to reduce payments of the Grant Proceeds to the Subrecipient, and all Subsequent DOB Proceeds shall be returned to the Subrecipient.
3. If the Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by DEO.
4. If DEO makes the determination that the Subrecipient does not qualify to participate in the CDBG-MIT Program or the Subrecipient determines not to participate in the CDBG-MIT Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, and this Agreement shall terminate.

Once DEO has recovered an amount equal to the Grant Proceeds paid to Subrecipient, DEO will reassign to Subrecipient any rights assigned to DEO pursuant to this Agreement.

Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

~ Remainder of this page is intentionally left blank ~

The person executing this Agreement on behalf of the Subrecipient hereby represents that he\she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorney’s fees.

CITY OF PALM BAY, FLORIDA

**DEPARTMENT OF ECONOMIC
OPPORTUNITY**

By _____
Signature
Suzanne Sherman

By _____
Signature
Insert Name

Title City Manager

Title Insert Title

Date _____

Date _____



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Mehul J. Parekh, P.E., Public Works Director

DATE: 1/6/2022

RE: Consideration of the GO Road Bond Paving Program, Phase 4. (AGENDA REVISION)

At the November 22, 2021, Infrastructure Advisory and Oversight Board (IAOB) meeting, the Board approved to endorse the attached map showing the units for Phase 4 Road Paving Program. The endorsement includes the following units: 6, 44, 45, 50 and 55 for thin lift overlay, milling and paving and Full Depth Reclamation (FDR). The total pavement miles for the five units endorsed for Phase 4 is estimated at 93.7 miles. The preliminary engineer's cost estimate for construction is \$39,874,270. These five units have a range in lower to medium Pavement Condition Index (PCI). The PCI rating provides for a measurement of the distressed pavement condition from a scale of 0 to 100 with 100 as the best and 0 as the worst condition.

REQUESTING DEPARTMENT:

Public Works, Finance

FISCAL IMPACT:

The fiscal impact for Phase 4 of the Road Bond Program is estimated at \$42,070,644 plus the estimated cost of \$1,959,533 for addition of Madden Avenue. The total appropriation for Phase 4 is \$44,030,177. Funding is available in the 2021 GO Road Bond Program Fund and will be appropriated to G/L 310-7090-541-6303.

RECOMMENDATION:

Motion to approve the GO Road Bond Paving Program Phase 4.

ATTACHMENTS:

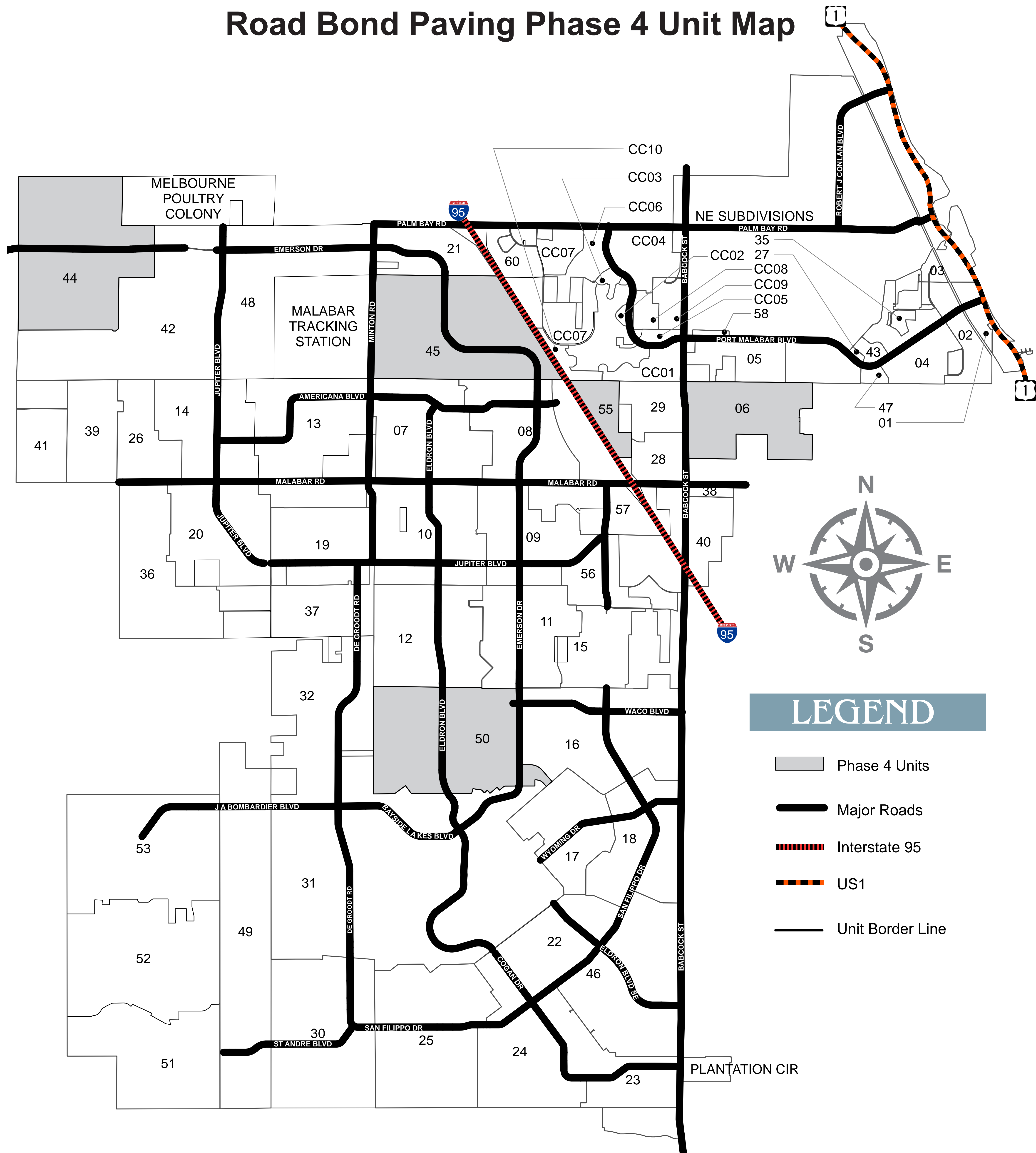
Description

Road Paving Phase 4 Road Unit Map



Public Works Department

Road Bond Paving Phase 4 Unit Map





LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Joan Junkala-Brown, Deputy City Manager; Charleena Cox, Human Resources Director

DATE: 1/6/2022

RE: Consideration of extending temporary benefits to City personnel for relief related to COVID-19 exposure.

On August 19, 2021, City Council approved the use of American Rescue Plan Act (ARPA) funding related to employee leave time due to COVID-19, not to exceed 80 hours per employee. Subsequently, on October 7, 2021, City Council approved an additional 40 hours for certain public safety personnel. This leave bank was made available retroactively to July 2, 2021 and expiring December 31, 2021 unless extended by City Council.

As of pay period ending on December 17, 2021, the City has expended a total of \$138,429.25 in ARPA to-date (a total of 6,753.5 hours). From July 2 – December 30, 2021, the City recorded 105 positive cases amongst personnel. The City witnessed a decline to one positive case during the month of October and no reported cases in November. With the recent increase in positive COVID-19 cases nationwide, the City has reported nine (9) positive cases between December 1-30, 2021, with three (3) additional pending confirmation.

Staff is requesting Council's consideration to extend the following previously approved accommodations to provide continued relief to personnel impacted by COVID-19, retroactive to January 1, 2022 and expiring March 31, 2022 unless extended by City Council.

COVID 19 Leave Bank for City Personnel

Whereas the Families First Coronavirus Relief Act (FFCRA) provided the City a mechanism to provide a leave bank of 80 hours, this federal program ended effective December 30, 2020; however, the City chose to extend these benefits through July 1, 2021. Subsequently on August 19, 2021, Council approved the use of ARPA funds to provide an additional 80 hours retroactive to July 2, 2021 and expiring December 31, 2021. It is important to note that all previously approved and unused COVID-19 leave bank for City personnel will expire December 31, 2021 and cannot be accumulated by employees.

The City Manager's Office and the Human Resources Department are requesting Council's consideration to extend this benefit, providing for a renewed 40-hour leave bank for all employees, retroactive to January 1, 2022 and expiring March 31, 2022 unless extended by City Council. The latest CDC guidelines released on December 27, 2021 recommends a shortened isolation and quarantine period of five (5) days followed by five (5) days of wearing a mask.

As was previously approved by Council on October 7, 2021, staff is requesting Council's approval of an additional renewed 40 hours available for certain public safety personnel, to include: Sworn Law Enforcement, Desk Booking Specialists, Crime Scene Technicians, Fire Department District Chiefs, and Firefighters. The additional 40 hours will only be applied to the positive COVID-19 exposure of the employee, and not applicable to the exposure and care of a family members.

Teleworking for Extenuating Circumstances

On August 19, 2021, City Council authorized the City Manager and the Human Resources Department to develop a Teleworking Policy for extenuating circumstances, to include COVID-19. This policy has been established, reviewed by the City Attorney's Office and approved by the City Manager for inclusion in the Human Resources Administrative Code G.25.2 (formerly Human Resources Administrative Code 1-31). This benefit will continue where applicable.

REQUESTING DEPARTMENT:

City Manager's Office, Human Resources

FISCAL IMPACT:

Funding is permitted under the American Rescue Plan Act using the assumed average hourly rate of approximately \$20.50 per hour (total ARPA dollars expended divided by total COVID-19 leave hours used) as estimated from the City provided Emergency Paid Sick Leave (EPSL) under FFCRA for eligible employees.

RECOMMENDATION:

Motion to authorize an extension to the temporary benefits to City personnel related to COVID-19 leave bank to be funded by the City's allocation under the American Rescue Plan Act.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/6/2022

RE: Consideration of modifying the funding source for the salary increase (11%) for the Chief Building Official.

At the December 16, 2021 Regular Council Meeting, Council approved an 11% increase for City's Chief Building Official (CBO), Mr. Valentino Perez. Part of the discussion at that meeting related to a recommendation to fund the salary increase out of General Fund because of the proposed shift of Code Compliance under the Building Department supervision. Although the shift of Code is no longer being recommended, the salary increase previously proposed is still warranted and recommended, and funding is requested to cover the increase solely out of the Building Fund.

Mr. Perez was hired on June 1, 2020 to serve as the CBO/Building Division Manager, formerly a division of the Growth Management Department. In mid-2020, the City established a standalone Building Department, charged with overseeing a staff of approximately 35 and the building construction for both residential and commercial development processes, to include issuing building permits and certificates of occupancy. Since establishing the Department, Mr. Perez has identified multiple opportunities to for process improvements, streamlined permitting, implemented an expedited permitting process and drone roof and high-rise inspections. Valentino is currently leading the Department towards obtaining the International Accreditation Services (IAS) recognition as well as implementing software for electronic plan review submittals.

As well as being a Certified Chief Building Official, Valentino holds specialized certificates as Electrical Inspector, Electrical Plans Examiner, Building Inspector, Building Plans Examiner and is a Florida licensed Electrical Contractor. Valentino is currently working towards becoming a Florida licensed Fire Inspector 1. Mr. Perez's annual performance evaluation conducted in June 2021 notes strong leadership skills, dependability, serving as a team-player by providing assistance with implementing process improvements in other departments, and fostering stronger relationships between the Department and building contractors.

On June 17, 2021, Valentino Perez submitted a request for a salary increase. To support his request, Mr. Perez conducted various salary studies for CBO positions at cities of similar size or comparable historical challenges. A recent inquiry to the City of Port St. Lucie (pop. 204,851), a city with a comparable history being a former General Development Corporation community, recently implemented a new master pay plan which provides a salary range for position of Building Official of \$101,229.25 - 156,905.33 with a mid-range salary of \$129,067.28. Other example ranges include: North Port (pop. 74,793), where the Building Official is at Assistant Director level \$88,742-\$133,114; and Cocoa (pop. 18,639), where the position is not a Director level \$82,492-\$131,996.

The City of Palm Bay's salary range for the position of Chief Building Official is \$80,364 - 121,017. The Chief Building Official position is a G1-AN pay grade with a salary range of \$80,364 - \$121,017. Mr. Perez currently makes an annual salary of \$109,015. The City Manager's Office is requesting to fund the previously approved increase of Mr. Perez's salary to \$121,017, an 11 percent increase, out of the Building Fund.

REQUESTING DEPARTMENT:

City Manager's Office

FISCAL IMPACT:

The current salary and all benefits of the Chief Building Official (CBO) is included in the FY 2022 adopted budget, Fund 452 (Building Enterprise Fund). The salary increase is a total of \$12,002, with a FY 2022 impact of \$8,770.69 (19 pay periods remaining) to be funded out of the Building Fund, account 452-3120-524-1210.

RECOMMENDATION:

Motion to approve funding the 11 percent salary increase for the Chief Building Official out of the Building Fund.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/6/2022

RE: Consideration of travel and training for specified City employees (Office of the City Manager).

City Manager Suzanne Sherman would like to attend the Florida League of Cities 2022 Action Days that will be held on February 8th 2022 in Tallahassee Florida. Legislative Action Days is an opportunity for Florida officials and municipalities to advocate Legislative issues impacting our City at the Capital.

Ms. Sherman will drive to Tallahassee on February 7th, 2022 to be there for the February 8th events, and will leave the next morning of February 9th. The cost for the event attendance is \$50.00, hotel stay for two nights is estimated at \$650.00, the parking fee and tolls are estimated at \$8.00 and per diem is estimated at \$84.00, for an estimated total of \$744.00.

REQUESTING DEPARTMENT:

City Manager's Office

FISCAL IMPACT:

Travel is estimated at \$744.00 and will be available in the City Managers Accounting Numbers 001-1210-512-4001 and 5501.

RECOMMENDATION:

Motion to approve travel as noted above for attendance to the Florida League of Cities 2022 Legislative Action Days.

ATTACHMENTS:

Description

Travel Backup

FLC 2022 Legislative Action Days

Registration OPENS on December 8, 2021!

The 2022 Florida League of Cities Legislative Action Days will be held February 8-9, 2022 in Tallahassee. Legislative Action Days is an opportunity for Florida municipal officials to come together to advocate for legislative issues impacting Florida cities at the Capitol. The cost for this event is \$50.00. On Monday, February 7, 2022, the League is offering a four-hour ethics workshop that meets the state requirements for Continuing Education in Ethics. There is no cost to League members for this Ethics workshop. Note: Cancellations for Legislative Action Days must be received in writing by January 26, 2022, and subject to a \$25.00 cancellation fee.

The Florida League of Mayors will also be holding its events during this time. See below for the schedules of both the Legislative Action Days and the Florida League of Mayors.

Legislative Action Days Schedule* (This registration is **separate** from the Florida League of Mayors registration.

If attending both programs, please register for both programs.)

Monday, February 7, 2022

1:00 p.m. - 5:00 p.m. Continuing Education in Ethics Workshop (Sittig Hall at Kleman Plaza/FLC office, 301 S. Bronough Street)

Tuesday, February 8, 2022

8:00 a.m. - 1:00 p.m. Registration Desk Open (Tallahassee City Hall Chambers, 300 S. Adams Street)

9:00 a.m. - 10:00 a.m. Legislative Briefing: Hear from the League's Legislative Team (Tallahassee City Hall Chambers, 300 S. Adams Street)

10:00 a.m. - 12:00 p.m. Capitol Visits (in regional teams)

12:00 p.m. - 1:00 p.m. Box Lunches (Tallahassee City Hall, 300 S. Adams Street)

1:00 p.m. - 5:00 p.m. Capitol Visits (in regional teams)

5:30 p.m. - 6:30 p.m. FLC Legislative Action Days Reception (Doubletree Hotel, 101 S. Adams Street)

Wednesday, February 9, 2022

7th & 8th
* hotel Monday & Tuesday *

Capitol Visits (on your own)

9:00 a.m. - 11:00 a.m. FLC Board of Directors Meeting (Sittig Hall at Kleman Plaza/FLC office, 301 S. Bronough Street)

* Subject to change

Florida League of Mayors Schedule* (This registration is ***separate*** from the Legislative Action Days registration.

To register for the FLM events, contact flm@flcities.com.)

Monday, February 7, 2022

4:00 p.m. - 6:00 p.m. FLM Workshop: Successful Communications (Tallahassee City Hall Chambers, 300 S. Adams Street); Registration deadline is February 2, 2022.

6:30 p.m. FLM Dinner (for mayors only); ticket required; RSVP by February 2, 2022, to flm@flcities.com.

Wednesday, February 9, 2022

8:15 a.m. FLM Press Conference (Florida Capitol)

12:00 p.m. - 1:00 p.m. FLM Board of Directors Meeting (Sittig Hall at Kleman Plaza /FLC office, 301 S. Bronough Street); Luncheon to follow for the FLM Board of Directors only.

* Subject to change

When 2/8/2022 10:00 AM - 2/9/2022 2:30 PM

Where Tallahassee, FL

Note: If there are additional registration options for this event, they will be shown below. To add an additional option, click the blue *Add* button to the left of the item(s). If there are no additional options available for this event, or additional options are available and you have successfully added the appropriate ones to the registration, click the gold *Proceed to checkout* button on the bottom right to continue on to the next registration step.

Sign in to register

Angela Burak

From: memberservices@flcities.com
Sent: Thursday, December 23, 2021 12:58 PM
To: Angela Burak
Subject: Order Confirmation

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Order Confirmation

Here are the details of your order. Please retain this email for your records.

Order Number: 96538
Order Date: Dec 23, 2021 12:47 PM
Bill To: Suzanne E. Sherman, MPA
Order Total: 50.00
Payment Method: Visa *****5675
Name on Card: Angela Burak

Item	Price	Qty	Total
FLC 2022 Legislative Action Days - Suzanne E. Sherman, MPA When: Feb 8, 2022 10:00 AM - Feb 9, 2022 2:30 PM Where: Tallahassee, FL	50.00	1	50.00

Registration option: Feb 8, 2022 10:00 AM - Legislative Action Days ONLY

Item Total	50.00
Shipping	0.00
Handling	0.00
Item Grand Total	50.00
Transaction Grand Total	50.00

You are receiving this communication from the Florida League of Cities or on behalf of one of its affiliated organizations, including: Florida Association of City Clerks, Florida Black Caucus of Local Elected Officials, Florida City and County Management Association, Florida Government Finance Officers Association, Florida Local Government Information Systems Association, Florida League of Mayors, Florida Municipal Attorneys Association, Florida Municipal Communicators Association, Florida Municipal Insurance Trust, and Florida Redevelopment Association.



[Join](#) [Sign In](#)

Hampton Inn & Suites Tallahassee Capitol - University

[Edit stay](#)

Mon, Feb 7 – Wed, Feb 9, 2022

Payment and Guest Details

Step 3 of 3

Total for stay

[Hide price details](#)

\$650.25

Price in \$USD

Flexible Rate

07 Feb 2022

08 Feb 2022

\$279.00

~~\$299.00~~

Total room charge

\$578.00

6.00 % per room, per night

5.00 % per room, per night

1.50 % per room, per night

Total taxes

→ (we are tax exempt)

x **\$72.25**

Total for stay: \$650.25

All fields are required unless marked optional.

Payment

Card number

Month

Year



Guest information

First name

Suzanne

Last name

Sherman

Email

suzanne.sherman@pbfl.org

Phone

3219523413

Country/Region

USA



Address

120 Malabar Rd

Address 2

Optional

Zip

32907


City

Palm Bay

State

Florida



 Add guest names

**SKIP THE FRONT DESK AND GO
STRAIGHT TO YOUR ROOM WITH
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& don't forget to download the app before your stay.



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Self parking

12.00 / night

Valet parking

12.00 / night

Pets

Service animals only

Guarantee and Cancellation Policy

There is a Credit Card required for this reservation. Free cancellation before 11:59 PM local hotel time on 06 Feb 2022.

By clicking "Book Reservation," I agree to the [Rules and Restrictions](#), [Site Usage Agreement](#) , and agree that Hilton will collect, use, share and transfer my information as set out in [Hilton's Global Privacy Statement](#) .

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Book Reservation

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1 of 3

KING ROOM W/ MINI FRIDGE NON SMOKING

Mini-fridge, free breakfast, free WiFi, work area, chair, HDTV

This king non-smoking room features our clean and fresh Hampton bed®, a mini-fridge, an HDTV and easy-to-operate alarm clock.

Catch up with work at the desk using free WiFi. You'll enjoy the convenience of making freshly brewed tea and coffee in your room and having an iron/ironing board. Refresh in the bathroom with a full shower, fluffy towels and bath amenities.

Friendly service, clean rooms, comfortable surroundings, every time.

[Read less](#)

Hotel Amenities



Connecting
Rooms



Free hot
breakfast



Free
WiFi



Non-
smoking
rooms



Digital
Key



Outdoor
pool



Fitness
center



Business
center



Meeting
rooms



al

Room highlights

- Sleeps 2
- Mini refrigerator
- Coffee maker
- 42-inch HDTV

- Hairdryer
 - Iron
 - Iron/ironing board
 - Neutrogena(R) bath amenities
 - Radio alarm clock
 - Air conditioning
-

See our full list of amenities

For your comfort

- 42-inch HDTV
- Air conditioning
- Cozy Hampton Bed
- Ergonomic Desk Chair
- Night Lights in Bathroom
- Radio alarm clock
- Sleeps 2
- Thermostat (adjustable)

For your convenience

- Coffee maker
 - Complimentary Hot Breakfast
 - Hairdryer
 - High Speed Internet-NoCharge
 - Iron
 - Iron/ironing board
 - Mini refrigerator
 - Neutrogena(R) bath amenities
-

120 Malabar Rd
Palm Bay, FL 32907

Get on I-95 N

- 8 min (3.1 mi)
- ↑ 1. Head east on Malabar Rd toward St Michael Pl
Pass by Advance Auto Parts (on the right in 1.9 mi)
- 2.5 mi
- ↵ 2. Use the left 2 lanes to turn slightly left
- 112 ft
- ⬆ 3. Use any lane to take the ramp onto I-95 N
- 0.6 mi

Continue on I-95 N. Take FL-528 W, Florida's Turnpike, I-75 N and I-10 W to US-90 W/Mahan Dr in Tallahassee. Take exit 209A from I-10 W

- 4 hr 28 min (319 mi)
- ⬆ 4. Merge onto I-95 N
- 31.0 mi
- ↘ 5. Take exit 205 to merge onto FL-528 W toward Orlando
- 1.1 mi
- ↶ 6. Keep left to continue on FL-528 W/FL-528 Toll W
Toll road
- 36.9 mi
- ↘ 7. Take exit 4 for Florida's Turnpike toward US-17/US-92/US-441/Orange Blossom Tr
Toll road
- 0.3 mi
- ↘ 8. Keep right, follow signs for Florida's Turnpike N and merge onto Florida's Turnpike
Toll road
- 54.6 mi
- ⬆ 9. Merge onto I-75 N
- 107 mi
- ↘ 10. Take exit 435 to merge onto I-10 W toward Tallahassee
- 88.0 mi
- ↘ 11. Take exit 209A to merge onto US-90 W/Mahan Dr toward Tallahassee
- 0.4 mi

Continue on US-90 W to your destination

12. Merge onto US-90 W/Mahan Dr 19 min (8.9 mi)
Continue to follow US-90 W
Pass by Burger King (on the left in 4.4 mi)
- 7.3 mi
13. Use the left 2 lanes to turn left onto N Franklin Blvd
- 0.5 mi
14. Slight right onto E Lafayette St
- 394 ft
15. Continue onto S Meridian St
- 0.1 mi
16. S Meridian St turns right and becomes E Gaines St
- 0.8 mi
17. Turn left onto Railroad Ave
- 0.1 mi
18. Turn right
Destination will be on the right
- 95 ft

Hampton Inn & Suites Tallahassee Capitol - University
824 Railroad Ave, Tallahassee, FL 32310

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

FY 2022 Per Diem Rates for ZIP 32310

Meals & Incidentals (M&IE) Breakdown

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & LastDay of Travel
Tallahassee	Leon	\$64	\$14	\$16	\$29	\$5	\$48.00



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Nelson Moya, Chief of Police

DATE: 1/6/2022

RE: Consideration of travel and training for specified City employees (Police Department).

The Police Department is requesting Council consideration for travel as noted below:

Crime Analyst Jessica Welzenbach will be traveling to Tampa, FL January 9, 2022 – January 14, 2022, February 6, 2022 – February 11, 2022 (Virtual), March 6, 2022 – March 11, 2022, April 3, 2022 – April 8, 2022, May 8, 2022 – May 13, 2022, and June 5, 2022 - June 10, 2022 to attend Florida Law Enforcement Analyst Academy (FLEAA). This training focuses specifically on real-world crime problems analysts solve each day; what they should do and how they should do it. This training will be held approximately 153 miles away. The Registration Cost is estimated at zero, the Lodging Cost is estimated at \$3,545.00, and the per diem is estimated at \$1,325.00 with an approximate total of \$4,870.00. This will be paid out of the Investigation Divisions Account (5013).

Projects Coordinator/Accreditation Alyssa Bermudez will be traveling to St Augustine, FL February 20, 2022 to February 25, 2022 to attend the Florida Police Accreditation Coalition Training Week and Conference. This conference/training focuses on promoting the concepts and upcoming changes for accreditation in Florida. This training will be held approximately 154 miles away. The Registration Cost is estimated at \$150.00, the Lodging Cost is estimated at \$745.00, and the per diem is estimated at \$370.00 with an approximate total of \$1,265.00. This will be paid out of the Executive Division Account (5010).

Sergeant Sean Pindar, Sergeant Nicholas Szczepanski, Crime Analyst Dawn Strickland, and Crime Analyst Jessica Welzenbach will be traveling to St Augustine, FL January 31, 2022 to February 2, 2022 to attend the FUSUS Florida Regional Training Symposium. This training focuses on promoting a real-time crime center platform to enhance public safety and investigations assets for law enforcement. This training will be held approximately 148 miles away. The Registration Cost is estimated at zero, the Lodging Cost is estimated at \$460.00, and the per diem is estimated at \$416.00 with an approximate total of \$876.00. This will be paid out of the Investigations Division Account (5013).

REQUESTING DEPARTMENT:

Police Department

FISCAL IMPACT:

The total cost of travel is estimated at \$7,011 and is available in 001-5010-521-4001 (\$1,115); 001-5010-521-5501 (\$150); and 001-5013-521-4001 (\$5,746).

RECOMMENDATION:

Motion to acknowledge and approve travel as mentioned above.

ATTACHMENTS:

Description



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Britta Kellner, Special Projects Manager

DATE: 1/6/2022

RE: Consideration of the City's 2022 federal legislative priorities.

On November 15, 2021, the 117th Congress passed H.R. 3684, the Infrastructure Investment and Jobs Act. Public Law 117-58 broadly provides for historic funding for new investments in infrastructure including roads, bridges, water and sewer, housing, and environmental and resiliency focused projects and initiatives.

In conjunction with unprecedented appropriations provided in 2021 by the American Rescue Plan Act (H.R. 1319), and the Coronavirus Response and Consolidated Appropriations Act (H.R. 113), and preceded by funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act in 2020, the need to enlist the expertise of Alcalde & Fay, our federal lobbying firm, to navigate and leverage trillions in funding dollars to address the City's most pressing needs cannot be more critical.

In collaboration with the Alcalde & Fay, staff has developed a draft proposal comprised of the most immediate and significant City projects and infrastructure issues which will be presented and advocated for on behalf of the City, to Senators Scott, Rubio, and Posey as well as federal agencies and staff with whom the City's federal lobbying team will pursue collaboration and engagement.

Unlike the City's state legislative priorities which may be considered during a three-month state legislative session, the preliminary federal priorities assessment should also allow for shifts in appropriations environments which may occur during the 117th Congress while in session throughout the year and impact federal lobbying effort and focus. Council will be kept apprised of the status of all lobbying efforts with requests for additional authorization as needed and as funding is passed through our state agencies as formula and competitive funding opportunities.

Staff is seeking Council's approval of the following programs/policy matters as part of the City's 2022 Federal Legislative Priorities.

- Support for Department of Justice (DOJ), and Department of Homeland Security (DHS) funding programs that provide assistance to State and local governments to enhance public safety, and improve emergency response through support for personnel, equipment, training, technology, and pre-disaster mitigation and disaster recovery.

- Environmental Protection Agency (EPA) Regulations Imposing Water Quality Standards in Florida - Currently, the EPA is considering new regulations to impose numeric nutrient criteria on Florida's lakes, rivers and other flowing waters. The regulations could place approximately 75% of Florida's water bodies in noncompliance or impaired status and would require the City to make costly investments in new treatment processes with severe financial impacts.
- Continuance of full funding for Department of Housing and Urban Development (HUD) - Community Development Block Grant Program (CDBG) for maintaining its full funding that enables the City to serve its low- and moderate-income residents.
- Support in advancing the proposed Florida National Guard Readiness Center Project, specifically related to the Malabar Space Force Annex on Minton Road in Palm Bay.

Staff is requesting consideration for support of three major funding needs which are critical to the City's transportation and environmental concerns:

- **Malabar Road Widening** - An appropriation in the amount of \$2.5 million would enable the City to undertake the required project design and continue to advance this regionally critical road widening project.
- **Septic to Sewer Program** - Funding in the amount of \$3 million to assist residents with the private expense of connecting approximately 200 parcels to City sewer.
- **Indian River Lagoon Protection** - \$1.5 million to serve as local match requirement for grants related to water quality projects impacting the health of the lagoon and Turkey Creek tributary.

REQUESTING DEPARTMENT:

City Manager's Office

FISCAL IMPACT:

If funding allocations are awarded to the City, this will result in an increase in revenues and will impact the operating accounts for Public Works and/or Utilities.

RECOMMENDATION:

Motion to approval the 2022 Federal Legislative Priorities.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

DATE: 1/6/2022

RE: Discussion of use of additional General Fund Undesignated Fund Balance for Fiscal Year 2021-2022.

As requested at the December 16, 2021 Regular Council Meeting, staff has compiled an additional list of unfunded needs for consideration.

The attached spreadsheet reflects some adjustments to the list presented in December, and also includes items for funding consideration totaling \$1,994,000. If approved, the remaining unassigned fund balance is projected at \$7,266,940, with \$12,589,425 held for 2 months operating (16.7% of budget less transfers) and \$946,340 held per the Stabilization Policy, for a total of \$20,802,705 in General Fund fund balance.

REQUESTING DEPARTMENT:

City Manager's Office

FISCAL IMPACT:

Depending on Council direction, multiple account numbers would be funded and reflected on an upcoming budget amendment.

RECOMMENDATION:

Motion to approve the use of undesignated fund balance as reflected in the attachment.

ATTACHMENTS:

Description

Additional Funding Priorities

General Fund History Fund Balance

FY 21-22 Unfunded Capital, Personnel and Other Project Priorities

Proposed Adjustments to Funding Request approved at 12-16-2021 RCM		
Original:	\$ 3,411,400	
	\$ (85,830)	Eliminate Asset Manager Position (Finance)
	\$ 40,500	Add new Community Information Coordinator, partial year (CMO)
	\$ 3,000	Reclassify vacant Procurement Agent (PA) 1 position to PA III (Procurement)
Revised:*	\$ 3,369,070	
Difference:	\$ (42,330)	

Per Council Direction at 12-16-2021 meeting, priorities for an additional \$2 Million are provided below.		
Fire	\$ 1,140,000	Replacement engines - Station 2 and 6; estimate \$570K each
	\$ 140,000	Replacement for Brush Truck 2
	\$ 175,000	Replace Bunker Gear (67 sets)
	\$ 10,000	Covered area for Station 6 Brush Truck
Police	\$ 104,000	From 12/16 Request for 8 replacement Police Vehicles (Durango), concerns about market fluctuations in pricing for vehicle and equipment (originally \$40,000 per car; increase to \$53,000); prior approval total \$320,000, increase to \$424,000
	\$ 265,000	Additional replacement of 5 Police Vehicles (Durango)
Growth	\$ 50,000	Consultants for planning support
	\$ 30,000	Replacement Code Vehicle
Public Works	\$ 80,000	Traffic Signal Respan x 2
Total:	\$ 1,994,000	

\$ 5,363,070 Combined Total of Both Lists

\$ 12,630,010	Current Unassigned Fund Balance
\$ 3,369,070	Total Revised Impact of Requests Approved 12/16/2021*
\$ 9,260,940	Adjusted Unassigned Fund Balance
\$ 1,994,000	Total Value of Additional Requests to be Considered 1/6/2022
\$ 7,266,940	Remaining Unassigned Fund Balance
\$ 12,589,425	Required Minimum Fund Balance/2 Months Operating; 16.7% of Budget Less Transfers
\$ 946,340	Stabilization Fund at 4%
\$ 20,802,705	Total Available General Fund - Fund Balance

Total Investment:

\$ 2,964,851	Capital - Vehicles/Equipment	55.3%
\$ 1,839,173	Capital - Infrastructure	34.3%
\$ 293,546	Personnel	5.5%
\$ 265,500	Other	5.0%
\$ 5,363,070	Total Amount of Undesignated Fund Balance Proposed	

GENERAL FUND

Fiscal Year:

Budgeted Subsequent FY - As Originally Adopted in September.

	ESTIMATED as of 11/04/13	FY 15 Approved Budget as of 9/25/14 For FY 14 Basis	FY 16 Approved Budget as of 9/21/15 for FY 15 Basis	FY 17 Approved Budget as of 9/22/16 for FY 16 Basis	FY 18 Approved Budget as of 9/19/17 for FY 17 Basis	FY 19 Approved Budget as of 9/18/18 for FY 18 Basis	FY 20 Approved Budget as of 6/17/20 for FY 19 Basis	FY 21 Approved Budget as of 06/14/2021 for FY 20 Basis	FY 22 Approved Budget as of 11/01/2021 for FY 21 Basis
	2013	2014	2015	2016	2017	2018	2019	2020	2021
Expenditures	55,861,718	58,553,889	60,949,527	64,227,340	68,315,437	72,567,846	75,662,828	75,291,296	83,236,049
LESS Transfers	(5,035,541)	(5,261,966)	(7,234,424)	(8,099,375)	(6,519,250)	(7,353,190)	(7,740,645)	(7,709,664)	(7,699,502)
LESS Capital Outlay	(124,770)	(22,000)	(157,500)	(186,211)	(725,061)	(432,000)	(82,112)	-	-
LESS Reserves	(108,481)	(55,761)	(443,222)	-	-	-	-	-	-
Adjusted Expenditures	50,592,926	53,214,162	53,114,381	55,941,754	61,071,126	64,782,656	67,840,071	67,581,632	75,536,547

Req'd Minimum Fund Balance (10%)

5,059,293	5,321,416	5,311,438	5,594,175	6,107,113	6,478,266	6,784,007	6,758,163	7,553,655
10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds	10%, Net Expds

Req'd Minimum Fund Balance (2-Months Operating)

Per Updated Policy - Resolution 2021-03 - Adopted January 2021

								12,589,425
								2-months; net expends

Increase in Req'd Min Fund Balance

Total Fund Balance @ 9/30	12,005,802	10,040,314	8,282,350	9,174,582	8,631,987	14,972,626	19,098,786	24,540,027	28,833,490
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Total Fund Balance Percentage	23.73%	18.87%	15.59%	16.40%	14.13%	23.11%	28.15%	36.31%	38.17%
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Unassigned Fund Balance @ 9/30	9,833,161	9,668,623	7,899,629	8,900,069	8,267,662	11,753,606	17,615,847	20,521,877	26,165,774
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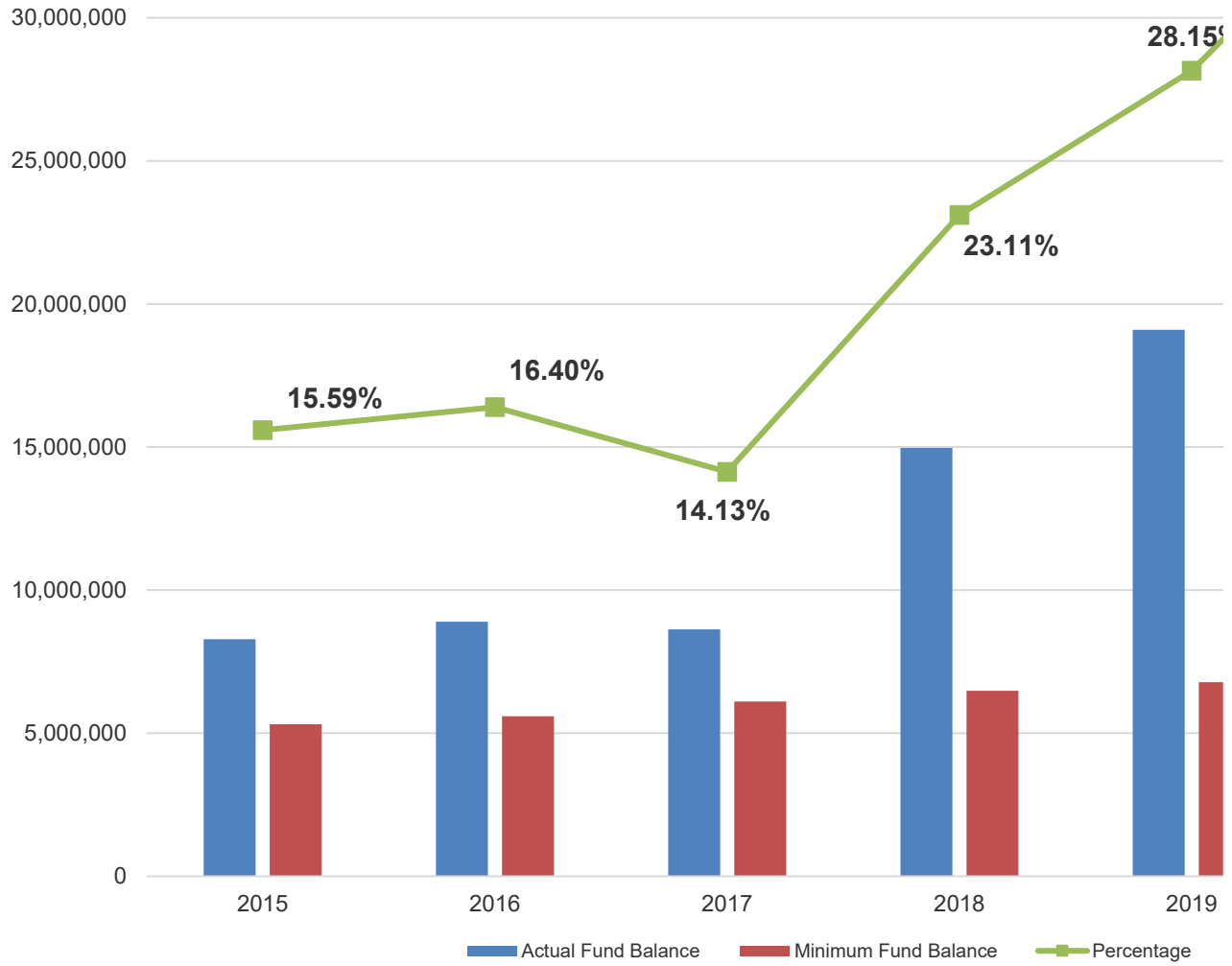
Unassigned Fund Balance Percentage	19.44%	18.17%	14.87%	15.91%	13.54%	18.14%	25.97%	30.37%	34.64%
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Unassigned Fund Balance - Surplus	4,773,868	4,347,207	2,588,191	3,305,894	2,160,549	5,275,340	10,831,840	13,763,713	13,576,350
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Stabilization Funds (2.0% - 4.0% Annually)									4.00%
Newly added with FY 2022 Approved Budget									946,340

	Actual Fund Balance	Minimum Fund Balance	Percentage
2013	12,005,802	5,059,293	23.73%
2014	10,040,314	5,321,416	18.87%
2015	8,282,350	5,311,438	15.59%
2016	8,900,069	5,594,175	16.40%
2017	8,631,987	6,107,113	14.13%
2018	14,972,626	6,478,266	23.11%
2019	19,098,786	6,784,007	28.15%
2020	24,540,027	6,758,163	36.31%

General Fund Balance vs. Minimum Fund Balance Requirement



*Unaudited as of publication date

rement

