TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE: SUBJECT TO REVISION

TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

TUESDAY, FEBRUARY 15, 2011
1:00 P.M.

For information regarding procedures for monitoring or participating in Town Council meetings, please refer to the end of this agenda.

I. CALL TO ORDER AND ROLL CALL
Jack McDonald, Mayor
David A. Rosow, Town Council President
Gail L. Coniglio, Town Council President Pro Tem
William J. Diamond, Town Council Member
Richard M. Kleid, Town Council Member
Robert N. Wildrick, Town Council Member

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. SWEARING IN OF ELECTED OFFICIALS
The Honorable Judge Kathleen Kroll

(Mayor Becomes the Presiding Officer)

IV. CALL TO ORDER AND ROLL CALL
Gail L. Coniglio, Mayor
William J. Diamond, Town Council Member
Richard M. Kleid, Town Council Member
Michael J. Pucillo, Town Council Member
David A. Rosow, Town Council Member
Robert N. Wildrick, Town Council Member

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V. ORGANIZATIONAL ITEMS

A. Election of the Town Council President
Pursuant to Section 3.01 of the Town Charter — Page 11

(Town Council President Becomes the Presiding Officer)

B. Election of the Town Council President Pro Tem
Pursuant to Section 3.01 of the Town Charter

VI. PRESENTATIONS

A. Recognition of Joanna Golino, Landmarks Preservation Commission, From March 2009 Through July 2010.

B. Recognition of Charles S. Roberts, Landmarks Preservation Commission, From March 2007 Through November 2010.

VII. COMMENTS OF MAYOR GAIL L. CONIGLIO

VIII. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

IX. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

X. APPROVAL OF AGENDA

XI. CONSENT AGENDA

A. MINUTES: JANUARY 11, 2011 — Page 15
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: JANUARY 12, 2011 — Page 29
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JANUARY 26, 2011. — Page 50

D. RESOLUTIONS

1. RESOLUTION NO. 5-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Three Year Enterprise License Agreement with ESRI in the Amount of $25,495 per Year Which Will Provide the Town with Unlimited License Use and Support of ESRI Enterprise Software and Authorizing the Town Manager to Execute this Purchase on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager] Page 69

2. RESOLUTION NO. 8-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Removal of a Historic or Specimen Tree from a Property Located Within the Town of Palm Beach; and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida. [H. Paul Brazil, Director of Public Works] Page 104

3. RESOLUTION NO. 10-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Contractual Service Specialists Agreement Between the Town of Palm Beach and Kenneth A. Scheppke, M.D., P.A., as Medical Director and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Kirk W. Blouin, Police Chief] Page 110

4. RESOLUTION NO. 13-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Hy-Byrd Inc, as the Highest Ranked Firm and M.T. Causley Inc. as the Second Highest Firm Responding to RFP No. 2010-28 for Plan Review and Inspection Services Based upon Their Proposals and the Selection Committee's Recommendations Pertaining Thereto; Authorizing Staff Negotiations with Hy-Byrd Inc. and M.T. Causley Inc. and Other Firms Responding to the RFP in the Order of Their Ranking Should Negotiations Be Unsuccessful with Hy-Byrd Inc. And/or M.T. Causley Inc., and Authorizing the Town Manager to Execute a Negotiated Contract on Behalf of the Town for Plan Review and Inspection Services Subject to the Town's Adopted Budget for Said Program and the Town Attorney's Approval of the Negotiated Contract for Legal Form and Sufficiency. [John S. Page, Director of Planning, Zoning, and Building] Page 122

5. RESOLUTION NO. 14-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement Between the Town of Palm Beach and the Palm Beach County Board of Commissioners for an Urban Area Security Initiative Grant in the Amount of $50,000; and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Jay Boodheshwar, Director of Recreation] Page 127

6. RESOLUTION NO. 15-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Pre-Construction Phase Contract to Burkhardt Construction, Inc., in the Amount of $49,950 and Establishing a Pre-Construction Phase Budget of $85,000 for (Construction Program Management) Construction Management at Risk Services for the D-15 (D-6 and D-7 Pump Station Improvements) and Authorizing the Town Manager to Enter into an Agreement Necessary to Complete this Phase of Said Improvements. [H. Paul Brazil, Director of Public Works] Page 139

7. RESOLUTION NO. 16-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Not to Exceed Pre-Construction Phase Budget of $25,000 for the Force Main Projects Within the Accelerated Capital Improvement Program. [H. Paul Brazil, Director of Public Works] Page 149

8. RESOLUTION NO. 18-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract Increase to D. B. Ecological Services, Inc. for Sea Turtle Nesting Monitoring Associated with the 2010-2011 Dune Restoration Project in Reaches 7 and 8, Establishing a New Contract Amount of $141,48 from $133,480. [H. Paul Brazil, Director of Public Works] Page 152

E. OTHER

1. North Ocean Boulevard Seawall–Authorization for Repairs and Plans for Permitting. [H. Paul Brazil, Director of Public Works] Page 157

2. Approval of Modified Directional Boring Pipe Impacts at Bradley Park and Lake Trail. [H. Paul Brazil, Director of Public Works] Page 159

3. Worth Avenue Phase I Close-Out With Savings Overall and Change Order Approval for Architect Mark Marsh. [H. Paul Brazil, Director of Public Works] Page 166

4. Waiver of Construction Prohibition During Winter Months to Allow Pre-Construction Activities for Pendleton Avenue Project. [H. Paul Brazil, Director of Public Works] Page 176

5. Approval of Budget Calendar for Preparation and Approval of the FY12 Budget. [Jane Struder, Director of Finance] Page 178

6. Approval of Selection Committee Substitution for Force Main CM-at-Risk Contract. [H. Paul Brazil, Director of Public Works] Page 183

7. Approval of Centennial Related Requests from the Greater South County Road Association. [Jay Boodheshwar, Director of Recreation] Page 184

8. Approval of Publix Use of Right-of-Way During Winter Months for Utility Relocation and Other Pre-Construction Activities. [H. Paul Brazil, Director of Public Works] Page 189

XII. BOARD/COMMISSION ANNUAL REPORT

A. Investment Advisory Commission. [Michael Andrews, Chair and Jane Struder, Director of Finance] Page 193

XIII. COMMITTEE REPORTS

A. Water Committee Meeting of January 12, 2011. [David A. Rosow, Town Council President] Page 225

B. Ordinances, Rules, and Standards Committee Meeting of January 25, 2011. [William J. Diamond, Town Council Member] Page 233

C. Public Works Committee Meeting of February 1, 2011. [Gail L. Coniglio, Mayor] Page 241

XIV. REGULAR AGENDA

A. Old Business

1. Update Regarding Proposed Restaurant on Peanut Island. [Gail L. Coniglio, Mayor]

2. Recommendation to Demolish the Casa Bendita Gazebo. [H. Paul Brazil, Director of Public Works] Page 250

B. New Business

1. County Budget Task Force Items. Page 253
[Thomas G. Bradford, Deputy Town Manager]

   a. RESOLUTION NO. 11-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging All Palm Beach Citizens and the Elected Officials and Leadership of Various Palm Beach County Governmental Bodies to Do All Things Within Their Power to Bring the Palm Beach County Sheriff's Office and the Palm Beach County School District under the Oversight of the Office of Inspector General to Facilitate Prudent and Restrained Budget Governance with Reduced Fraud and Waste; Setting Forth Instructions for Distribution of this Resolution; providing an Effective Date.

   b. Request to Town Council for New Mayor Gail Coniglio to Fight Any Weakening of the Voter Approved Inspector General Ordinance.

   c. Request to Town Council for Continuation of the Task Force and its Work and Any New Direction for the Coming Year.

   d. Request to Town Council to Fill a Vacancy on the County Budget Task Force Due to a Resignation.

2. Recreation Advisory Commission Recommendations Regarding Privatization Studies for the Recreation Center and Tennis Facilities. Page 258
[Jay Boodheshwar, Director of Recreation]

3. Special Olympics Pro-Am Golf Tournament at the Par 3 Golf Course. Page 267
[Jay Boodheshwar, Director of Recreation]

4. All Town Centennial Celebration on April 17, 2011. Page 277
[Jay Boodheshwar, Director of Recreation]

5. Proposal for a Green Market to be Held Within the Royal Poinciana Plaza. Page 281
[Thomas G. Bradford, Deputy Town Manager]

6. Parking on Clarke Avenue. [H. Paul Brazil, Director of Public Works] Page 287

7. Use of Public Beach Accesses by Private Beach Cleaners. Page 288
[H. Paul Brazil, Director of Public Works]

XV. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 7-11 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Granting to Florida Power & Light Company, its Successors and Assigns, an Electric Franchise, Imposing Provisions and Conditions Relating Thereto, Providing for Monthly Payments to the Town of Palm Beach, and Providing for an Effective Date. [Thomas G. Bradford, Deputy Town Manager] Page 293

XVI. ANY OTHER MATTERS

XVII. ADJOURNMENT

PLEASE TAKE NOTE

- No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.

- The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio". If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting under "Agendas , Minutes, and Audio."

- If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

- Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

- Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.

- A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS: Any citizen is entitled to be heard on an official agenda item under the section entitled "Public Hearings," subject to the three minute limitation.

COMMUNICATIONS FROM CITIZENS: Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation.

OTHER AGENDA ITEMS: Any citizen is entitled to be heard on any official agenda item when the Town Council calls for public comments, subject to the three minute limitation.

Town Council Meetings are public business meetings and, as such, the Town Council retains the right to limit discussion on any issue.

Town of Palm Beach
Meeting Schedule

2/10/11

Tue 02/15/2011 01:00 PM	Town Council Meeting	Council Chambers
Wed 02/16/2011 09:30 AM	Town Council Meeting - Development Review	Council Chambers
Thu 02/17/2011 02:00 PM	Code Enforcement Board Meeting	Council Chambers
Fri 02/18/2011 09:00 AM	Firefighters Retirement Board of Trustees Meeting	Council Chambers
Mon 02/21/2011 04:00 AM	PRESIDENTS' DAY	TOWN HALL CLOSED
Tue 02/22/2011 09:30 AM	Planning & Zoning Commission Meeting	Council Chambers
Wed 02/23/2011 09:00 AM	Architectural Commission Meeting	Council Chambers
Thu 02/24/2011 09:00 AM	Shore Protection Board Meeting	Council Chambers
Mon 02/28/2011 12:00 PM	County Budget Task Force Meeting	Council Chambers
Wed 03/02/2011 09:00 AM	Recreation Advisory Commission Meeting	Council Chambers
Tue 03/08/2011 09:30 AM	Town Council Meeting	Council Chambers
Wed 03/09/2011 09:30 AM	Town Council Meeting - Development Review	Council Chambers
Tue 03/15/2011 09:30 AM	Planning & Zoning Commission Meeting	Council Chambers

Wed 03/16/2011 09:30 AM	Landmarks Preservation Commission	Council Chambers
Thu 03/17/2011 02:00 PM	Code Enforcement Board Meeting	Council Chambers
Wed 03/23/2011 09:00 AM	Architectural Commission Meeting	Council Chambers
Thu 03/24/2011 09:00 AM	Shore Protection Board Meeting	Town Council Chambers
Tue 04/12/2011 09:30 AM	Town Council Meeting	Council Chambers
Wed 04/13/2011 09:30 AM	Town Council Meeting - Development Review	Council Chambers

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Organizational Items

Agenda Title

A. Election of Town Council President
Pursuant to Section 3.01 of the Town Charter

B. Election of Town Council President Pro Tem
Pursuant to Section 3.01 of the Town Charter

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated February 8, 2011, from Peter Elwell
- Ballot for Appointment of Town Council President
- Ballot for Appointment of Town Council President Pro Tem

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Election of Town Council President and Town Council President Pro Tem

Date: February 8, 2011

GENERAL INFORMATION

Attached are two ballots, one for election of the Town Council President and one for the election of the Town Council President Pro Tem.

At the January 10, 2006, Town Council meeting, the Town Council adopted a policy to include on the ballots only those Council members who wish to be considered for the positions.

If any elected officials wish to have their name removed from either ballot, please advise me **by 5 p.m. on Monday, February 14, 2011.**

Attachments

PBE:cek

cc: Town Clerk's Office

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BALLOT FOR APPOINTMENT OF **TOWN COUNCIL PRESIDENT**

TOWN COUNCIL MEETING FEBRUARY 15, 2011

Please circle one name from the list of names appearing below.

Position to be filled - **Town Council President**

William J. Diamond

Richard M. Kleid

Michael J. Pucillo

David A. Rosow

Robert N. Wildrick

Signature of Town Council Member: _____

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BALLOT FOR APPOINTMENT OF **TOWN COUNCIL PRESIDENT <u>PRO TEM</u>**

TOWN COUNCIL MEETING FEBRUARY 15, 2011

Please circle one name from the list of names appearing below.

Position to be filled - **Town Council President <u>Pro Tem</u>**

William J. Diamond

Richard M. Kleid

Michael J. Pucillo

David A. Rosow

Robert N. Wildrick

Signature of Town Council Member: _____

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TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: JANUARY 11, 2011

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

Presenter

Anne Boyles, Administrative Assistant

Supporting Documents

- Minutes of the Town Council Meeting Held on January 11, 2011

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, JANUARY 11, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, January 11, 2011, at 9:30 a.m. in the Town Council Chambers. On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles gave the invocation. Council President Rosow led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Joanna Golino, Landmarks Preservation Commission, From March 2009 Through July 2010.

Council President Rosow announced that Joanna Golino was not present due to illness.

Clerk's Note: Due to a technical issue, the ethics presentation was heard later in the meeting. The next item heard was Item. IV. Comments of Mayor Jack McDonald.

B. <u>County Commission on Ethics. [Alan Johnson, Executive Director of the County Commission on Ethics]</u>

Alan Johnson, Executive Director of the County Commission on Ethics (COE), gave a power point presentation explaining the history, jurisdiction, functions, and composition of the Commission. A copy of the presentation was submitted for the record. Mr. Johnson stated that people could visit the COE website *palmbeachcountyethics.com* to review all 2010 advisory issues. He answered questions from Council Member Diamond:

- The Election Law is not under the jurisdiction of the COE.
- The local Ethics Committee cannot be less stringent than the County or the State; the COE cannot enforce the local ethics code; but the COE would work together with the local Ethics Committee.
- There is a complaint form and a description on how to fill it out on the web page.

Council Member Kleid asked about the tradition of the Council having lunch together on Council meeting days along with members of the Town staff. He explained that a Council member would pay for the lunch and the Council did not discuss Town Council items. Mr. Johnson replied that he could not speak to a specific set of circumstances but could address the issue in broad terms. He explained that the Sunshine Law was not within the jurisdiction of the COE. He stated that as long as there is no discussion regarding any item that is likely to come before the Council, it was okay to get together. He explained there is a reporting requirement for gifts more than $100 and. if the lunch was valued at more than $100, the employee would have to report it. He added that as long as the lunch was not given by a lobbyist or a principal of a lobbyist then it is not prohibited. He suggested the issue be sent to his office in writing for an advisory opinion. Council President Rosow thanked Mr. Johnson for his report. Mr. Johnson stated that the COE would provide two live training sessions and a DVD for training on ethics.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented that this was the best dressed Town Council he had served with in sixteen years.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Kleid spoke about the Centennial banners hanging from the light poles in Town and stated that the Town owes the Civic Association a debt of gratitude for bringing the idea forward and executing it.

Council Member Diamond congratulated Council President Pro Tem Coniglio on her election to Mayor and Michael Pucillo for being elected to the Town Council.

Council Member Diamond expressed his disappointment in the actions taken by the Architectural Commission in twice unanimously rejecting an application to build a new office structure on the long vacant property that was formerly the Howard Johnson location at 2880 South Ocean Boulevard. He stated that ARCOM never told the applicant what would be considered to be a suitable structure. He further stated that the applicant had withdrawn his proposal for a new structure and had agreed to use the old fashioned Howard Johnson facade.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Leslie Evans, 135 Seminole Avenue, spoke about the disrepair and numerous violations issued for the property located at 332 South County Road, which would be coming before the Council at the January 12 meeting. He asked the Council to deny the appeal by Mr. Roddy.

Sherry Frankel, President of the Worth Avenue Association, reported that the lease for the twinkle lights on the trees on Worth Avenue had ended. She asked the Council's permission to pick up the lease. Town Manager Peter Elwell clarified that the Council did not need to take action on the transition for funding of the lease, but would need to decide whether it was appropriate to have the lights up for the remainder of the season; not just the holiday period.

Motion was made by Council Member Kleid and seconded by Council Member Diamond to approve the Worth Avenue Association keeping up the lights during the remainder of the season at the expense of the Association. On roll call, the motion carried unanimously.

Dr. Jerome Klein, 225 Emerald Lane, addressed the Council regarding the many construction and demolition projects around his home and his loss of quality of life due to the work. He asked for a moratorium on construction during the season, December to March, and suggested that contractors be required to post a bond for potential damage to homes adjacent to the construction site. Council President Pro Tem Coniglio responded that the Council had changed the construction regulations for the benefit of seasonal and year-round residents last year by reducing the time frame of construction from December to March. She spoke about the problems with balancing the needs of the seasonal residents and those of the year-round residents. Town Manager Elwell informed the Council that a meeting had been held with the Mayor, staff, and Dr. and Mrs. Klein. He stated that there had been multiple construction projects near the Klein's home and it appeared there would be more projects. He further stated that there had been some violations, which had been addressed through Code Enforcement, through the right-of-way permits on the parking, or through the construction inspection process. He said that reconsideration of even tighter regulations may be the only option available when there is a concentration of projects in one neighborhood. Council Member Diamond suggested Dr. Klein attend the Ordinances, Rules, and Standards Committee (ORS) meeting on January 25th.

Clerk's Note: Item III.B. Presentation by the County Commission on Ethics was heard at this time.

Sunny Sessa, 1 Via Sunny, asked about using the $26,000 that was not used for the election to pay to keep the lighting on Royal Palm Way and Royal Poinciana. She asked why the lights were taken down. Council President Rosow responded that the lights were also up last year and paid for through donations. He stated that the Council was holding the line on expenses and he did not believe there would be support for paying for the lights. Council Member Diamond agreed, suggesting that the private sector, particularly the merchants, pay for the lights.

Jimmy Ryan, 2860 South Ocean Boulevard, expressed his disappointment that the Town could not come together with Gene Lawrence and Mr. Sloan on the derelict building on the south end of Town (2880 South Ocean Boulevard).

Robert Deziel, 311 Brazilian Avenue, spoke in strong disagreement of a recent letter in the Shiny Sheet asking for Town support of the police officers' position on the wage discussion. He said that the newspaper is the wrong forum for debate between the Town Council and any given employee group. Council President Pro Tem Coniglio stated that Town Manager Elwell was working on a meaningful way to educate the residents of the Town and the employees on factual information. Referring to a comment made by Mr. Deziel, Council Member Kleid clarified that the dance held recently for police officers was sponsored by the police foundation, which is not associated with the FOP (Fraternal Order of Police) or the police department, and the reason for the dance was to raise money for college scholarships for children of police officers.

VII. APPROVAL OF AGENDA

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve the Agenda. On roll call, the motion carried unanimously.

VIII. CONSENT AGENDA

A. MINUTES: DECEMBER 14, 2010 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: DECEMBER 14, 2010 APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION

C. MINUTES: DECEMBER 15, 2010 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

D. MINUTES: JANUARY 7, 2011 APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON DECEMBER 17, 2010.

F. RESOLUTIONS

1. RESOLUTION NO. 3-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Designation of Historic or Specimen Trees from Properties Located Within the Town of Palm Beach; Adding Newly Designated Historic or Specimen Trees; Providing for the Recording of Said Designations; and Providing That a Copy of this Resolution Be Recorded in the Public Records or Palm Beach County, Florida. [H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 4-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Mathews Consulting, Inc., in the Amount of $36,028 for the A-39 and A-41 Sanitary Pump Stations Improvements, Establishing a Design and Bid Phase Budget of $40,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements. [H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 7-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Professional Design Consultant Fee Proposal with Bridges, Marsh & Assoc. In an Amount Not to Exceed $65,000 for Possible Alterations and Renovations in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]

G. OTHER

1. Approval to Use CM at Risk for Force Main Project. [H. Paul Brazil, Director of Public Works]

2. Approval of Preservation Foundation Request to Waive Parking Fees at Phipps Ocean Park for Centennial Event on January 15, 2011. [Jay Boodheshwar, Director of Recreation]

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve the Consent Agenda. On roll call, the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Report from Publix Regarding Possible Temporary Store. [William Rayburn, Director of Asset Management, Publix]

William Rayburn, Director of Asset Management for Publix, reported that plans were to start construction on the new Publix store on February 1. He spoke about the considerations for a temporary store in Palm Beach. He read a list of individuals who had been involved in the process including Ed Crenshaw, the CEO of Publix. He announced that after collection of all the data, Publix had come to the conclusion that it would not be able to open a temporary store in Palm Beach. He gave the consideration of safety, the ability to satisfy customers, and the ability to translate the Publix experience as reasons for not opening a temporary store. The Council members expressed their disappointment with the decision.

Council President Pro Tem Coniglio reminded Mr. Rayburn that the construction of the new store was to be completed the day before promised so that the community could be served appropriately.

In response to questions from Council Member Kleid, Mr. Rayburn discussed the two locations that Publix had considered for a temporary store, Testa's gas station and the Amici (formerly Salamander) Market, and the reasons they were not selected.

Council President Rosow reported that he had a phone conversation with Mr. Crenshaw and had talked about the business perspective and safety perspective for the decision. He asked about a telephone service for the delivery of groceries to residents. Mr. Rayburn responded that Publix did not have curbside pickup or delivery service but there were third party companies that shop at the local store and provide the service. Council Member Diamond suggested Publix offer residents something to ameliorate the problem.

Allen Mason, 1485 Via Manana, stated his disappointment with the renovation program of Publix and said that renovations should have been made while the store remained open.

2. Foreclosure of Code Enforcement Liens. [John C. Randolph, Town Attorney]

Town Attorney Randolph reported he had met with Code Enforcement staff, reviewed the list of existing liens, and had made a determination of ownership of properties and whether they were homesteaded. He listed four properties to be recommended to the Code Enforcement Board for foreclosure:

1. 230 Atlantic Avenue - $5,150 lien
2. 226 Pendleton Avenue - $43,400 and $290,250 liens
3. 2283 West Ibis Isle Road - $122,500 lien
4. 237 Brazilian Avenue - $35,000 lien

Raychel Houston, Code Enforcement Manager, stated that the next meeting of the Code Enforcement Board was scheduled for January 20, but to provide service and notice to the residents, the properties would not be brought forward until February 18.

Council Member Kleid questioned why other properties on the list were not recommended. He stated that if there is a substantial amount of money owed to the Town, and that the Council had said they would like Code Enforcement to move expeditiously and foreclose on the properties.

Mayor McDonald asked why Code Enforcement did not start foreclosure action on properties where a financial institution was in the foreclosure process. He said it may take years for the lender to foreclose.

Code Enforcement Manager Houston reported that the publication letters had been mailed and the publication of names would occur after January 1. She added that she had been working with the Finance Department to turn some of the fines over to a collection agency.

Council Member Diamond requested a status column be added to the list of fines to give an explanation of the actions on the lien.

Council President Rosow reiterated that Code Enforcement should be aggressive and let the property owners prove they are homesteaded.

Town Attorney Randolph stated that the recommendations would be presented to Code Enforcement and then brought back to Council.

3. Staff Update Regarding Proposed Restaurant on Peanut Island. [John S. Page, Director of Planning, Zoning, and Building]

John Page, Director of Planning, Zoning, and Building, reported that in order to build a restaurant on Peanut Island, the Palm Beach County Comprehensive Plan would have to be amended. He shared five facts he had received from Barbara Alterman, Director of the County's Planning, Zoning & Building Department, regarding the status of the issue. He reported that County Commissioner Karen Marcus had scheduled an information meeting for neighboring municipalities on the morning of January 18. He spoke about the timeline for approving a change to the Land Use Plan saying it could take four-to-six months at the County level and up to a year for approval from Tallahassee. There was consensus for Council President Pro Tem Coniglio, as Mayor Elect, to attend the meeting

Motion was made by Council Member Diamond to oppose the project.

Council Member Kleid said he was not comfortable giving instructions at this time. Council President Pro Tem Coniglio suggested she attend the meeting and report back to the Council in February at which time the Council could formalize an approach. The Council agreed.

Council Member Diamond withdrew his motion.

B. New Business

1. Update from Palm Beach Island Cats. [David Leavitt and Jeff Giangrande]

Jeff Giangrande addressed the Council about the Palm Beach Island Cats Program. He stated that the current finances were unsustainable. He suggested the Council share in the expense of the program and contribute 50% of the $250,000 budget. David Leavitt explained that residents were not responding to their marketing program.

Council Member Diamond asked what would happen to the cat population without the efforts of Island Cats. Jan Corbin, 381 South Lake Drive, replied by giving the history of the cats program. She stated that by maintaining a feral cat population, other animals would not come in.

A lengthy discussion followed on the program, the apathy of the residents, and the public health and safety issues related to the feral cats.

The Council members praised Island Cats for their efforts.

Motion was made by Council Member Wildrick and seconded by Council Member Diamond to take the $27,000 that was to be used for the Town election and give it to Island Cats.

Council Member Kleid stated that the Council had to make a determination, because of health and safety issues, as to whether it is an obligation of government to fund the cats program.

Town Manager Elwell clarified that for proper accounting of the expenditure of the funds, the money needed to be appropriated from the contingency account.

Council Member Wildrick amended his motion to appropriate $27,000 from the Contingency account and bestow it on Island Cats with the understanding that Island Cats would come back to Council with a financial plan. Council Member Diamond seconded the amended motion.

Town Manager Elwell stated that the $27,000 in the Town Clerk's budget would not be spent for other issues.

On roll call, the motion to appropriate $27,000 to Island Cats carried unanimously.

Council President Rosow suggested Island Cats put together a financial plan and take it before the Finance and Taxation Committee for review. He stated that the Committee would then bring the plan to the Council. He reiterated the Council's comments for Island Cats to do a better job of selling the program to the residents.

2. Request for Permission to Use Scaffolding in Town Right-of-Way at 205 Royal Palm Way. [Mike McKnight, Prodigy Contracting Group]

Paul Brazil, Director of Public Works, reported that Public Works had received a request for a right-of-way permit to complete renovations at 205 Royal Palm Way. He explained that seventeen windows on the east façade of the building would be replaced, which would affect the right-of-way. He stated that the hardship stated was that the contractor

had already mobilized on the site. He further stated that Town staff does not recommend the Council approve the request.

Keith Spina of Spina Partners Architects reported on the deteriorated conditions in the landmarked building. He said that the property line is five feet east of the building and it is not clear if the work would occur in the right-of-way. He read from Section 2.24 of the Construction Code and stated that the work would not negatively affect the public right-of-way.

Town Manager Elwell responded to Mr. Spina's comments stating that application of the regulations is applied equally in all cases. He explained that there are areas all over Town that have 5' of public and 5' of private right-of-way, but it functions as public sidewalk and is protected as a public sidewalk during the season.

Council President Pro Tem Coniglio expressed concern for the safety of children attending one of the two schools nearby who may walk under the scaffolding. Danny Brown of GSBR explained that the scaffolding would be three feet from the building and there would be two seven-foot sections of scaffolding that would be set up at 9:00 a.m. and taken down at 5:00 p.m. every day.

Referring to remarks made earlier in the meeting by Dr. Klein regarding disruption caused by legal construction during the season, Council Member Diamond made a motion to deny the request.

Council President Rosow reported he had looked at the site and he did not see a lot of foot traffic in the area.

Council President Pro Tem Congilio seconded the motion. On roll call, the motion to deny the request carried 4-1 with Council President Rosow dissenting.

3. RESOLUTION NO. 6-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing D.S. Eakins Construction Corporation, Foster Marine Contractors, the Whiting-Turner Contracting Company, Murray Logan Construction, Inc., and Johnson-Davis, Inc., to Receive Bid Packages for Projects Meeting the Scope of Work of RFQ No. 2011-04. [H. Paul Brazil, Director of Public Works]

Town Attorney Randolph read Resolution No. 6-11 by title, as printed above.

Town Manager Elwell explained that the resolution was a result of lessons learned in the past year and the advice received through the forensic audit and the internal audit process to pre-qualify firms to do the work for the Town. He stated that in the future every job of this type would be competitively bid among the five pre-qualified firms.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Coniglio to approve Resolution No. 6-11. On roll call, the motion carried unanimously.

X. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 31-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 86, Planning, Section 86-90, Standards, at Subsections (c) and (d); Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. Amending Town Code at Chapter 86, Planning, Section 86-90, Standards, at Subsections (c) and (e). [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 31-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 31-10. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 32-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 94, Sales, Articles II, III and IV; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 32-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 32-10. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 33-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 98, Secondhand Goods, Article II, Secondhand Dealers, by Deleting Sections 98-32 and 98-33 in Their Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 33-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 33-10. On roll call, the motion carried unanimously.

4. ORDINANCE NO. 34-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 106, Streets, Sidewalks and Other Public Places, at Article V, Section 106-158, Relating to the Prohibition of Bicycle Riding on Sidewalks Within Commercial Zoning Districts; Amending Article VIII, Section 106-291, Relating to Certificate of Compliance; and Section 106-292, Relating to Standards for Newsrack and Modular Newsracks Including Maintenance, Installation and Locations; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 34-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 34-10.

Council President Pro Tem Coniglio expressed concern with Segway tours on the sidewalk. Council Member Wildrick responded that Segways are not permitted on sidewalks in the business district by ordinance. He noted they are allowed on the bike path.

Council Member Diamond asked if Segways were allowed on the streets. Town Manager Elwell suggested the issue of the use of Segways be sent to ORS for further review.

Council President Pro Tem Coniglio asked for clarification if Segways fall under the bicycle description. Town Manager Elwell responded that one effect of the Ordinance, if approved, would be to prohibit the use of the Segways on sidewalks in the commercial areas. He said he would get answers to Council's questions regarding any regulations on the use of Segways elsewhere in Town on sidewalks outside of the commercial areas and the use of Segways on the roadways.

On roll call, the motion to approve Ordinance No. 34-10 carried unanimously.

5. ORDINANCE NO. 35-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Buildings and Building Regulations; Article III, Architectural Review; Division 2, Architectural Commission; Section 18-169, Removal Provisions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 35-10 by title, as printed above.

Council Member Diamond read Section 18-169 of the Ordinance.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 35-10. On roll call, the motion carried unanimously.

6. ORDINANCE NO. 36-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 110, Subdivisions, So as to Modify the Term "Building Official" Used Throughout to "Director of Planning, Zoning & Building"; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 36-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 36-10. On roll call, the motion carried unanimously.

B. First Reading

None

XI. ANY OTHER MATTERS

Council President Rosow reported that as a result of a conversation with Council Member Diamond, he had looked up the Statute under the United States Code regarding the conduct of veterans and the salute to the flag. He reported that veterans can only salute out of uniform when the flag is hoisted, lowered, or passing. He said it is not acceptable to salute out of uniform for the Pledge of Allegiance.

XII. ADJOURNMENT

There being no further business, the Town Council Meeting of Tuesday, January 11, 2011, was adjourned at 1:32 p.m.

APPROVED:

_____
David A. Rosow
Town Council President

ATTEST:

_____
Cheryl A. Somers
Acting Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: JANUARY 12, 2011

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

Presenter

Anne Boyles, Administrative Assistant

Supporting Documents

- Minutes of the Town Council Meeting Held on January 12, 2011

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON WEDNESDAY, JANUARY 12, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, January 12, 2011, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present with the exception of Mayor Jack McDonald, who was unable to attend the meeting.

President Rosow noted that Mayor McDonald had an earlier meeting and would attend the meeting if time permitted.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

There were none, as Mayor McDonald was unable to attend the meeting.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Eric Gilbertson, 151 Chilean Avenue, commented regarding his residence being a topic of discussion at the December meeting, and his reasons for not being present. He thanked the Town Council for not raising taxes.

The following residents commented regarding difficult parking issues on Clarke Avenue:

Gerald Lemole, 124 Clarke Avenue;
John Gooch, 132 Clarke Avenue;
Robert Forbes, 171 Clarke Avenue;
Susan Ross, Clarke Avenue and Ocean Boulevard; and
Emily Jane LeMole, 124 Clarke Avenue.

Council Member Diamond asked that the parking issue on Clarke Avenue be placed on the Agenda for next month.

President Rosow noted that, although the parking issue could be revisited, it had been discussed at three Town Council meetings, at least, and it was a difficult situation on a variety of streets. He stated that he did not know what else could be done.

VI. APPROVAL OF AGENDA

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Agenda. On roll call, the motion carried unanimously.

VII. PUBLIC HEARINGS

Administrative Assistant Boyles administered the oath to all those who would be providing testimony.

A. RESOLUTION NO. 1-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 105 Banyan Road Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John Page, Director of Planning, Zoning, and Building]

Historic Consultant Jane Day provided the Designation Report of the 105 Banyan Road property for landmarking. Ms. Day read criteria three and four into the record.

President Pro Tem Coniglio thanked the homeowner and commented that because there would be a renovation of the property, it showed that landmarking was very flexible in creating a use that becomes 21st century.

Town Attorney Randolph read Resolution No. 1-11 by title, as printed above.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to accept the Designation Report of 105 Banyan Road and approve Resolution No. 1-11 designating said property on the basis that it met criteria 1, 3, and 4 of section 54-161 Town of Palm Beach Code, Landmarks Preservation 2-84. On roll call, the motion carried unanimously.

VIII. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 6 -11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adding A New Provision To The Town Code Of Ordinances At Chapter 18, Building And Building Regulations, Section 108.2 Permit Fees; Providing For The Institution Of A Building Permit Revision Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 6-11 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 6-11. On roll call, the motion carried unanimously.

IX. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Administrative Decision that the Nonconforming Residential Use Located at 332 South County Road has Been Abandoned by Discontinuance for a Period of Two Years. [John Page, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by:

- Council Member Diamond was called by Attorney George Ord, but he did not discuss the appeal with him.

- President Rosow, President Pro Tem Coniglio, and Council Member Wildrick spoke briefly with Attorney Ord on behalf of his client.

Attorney Ord provided an overview of the appeal on behalf of his client, Robert Andrew Roddy, of 332 South County Road, LLC.

Planning, Zoning and Building Director John Page provided staff's comments and offered photos showing the condition of the property.

Zoning Administrator Paul Castro provided, for the record, a letter from Leslie Evans dated January 11, 2011, as evidence for the Town, and provided a brief history of the property. He noted that the property owner was not able to provide staff any evidence of leases, water bills, or electric bills that showed that anyone has leased or used any of the apartments. As a result, staff made the decision that the property owner had abandoned the apartment use of 19 dwelling units at 332 S. County Road.

Attorney Ord submitted a letter from Leslie Evans dated September 15, 2010, into the record regarding Mr. Roddy's high quality restoration of a privacy wall. Attorney Ord provided a rebuttal to staff. He stated that if the apartment use was taken away, it would be nonsensical for Mr. Roddy to continue the completion of compliance with Code Enforcement. He discussed the Ordinance on abandonment of property.

Robert Andrew Roddy, manager of 332 South County Road, LLC, pointed out that the pictures showing the condition of the property were taken a year ago and improvements had been made since that time. He discussed his progress of the improvements to the building. He asked for support from the Town to allow him to move forward with his restoration project.

President Rosow stated that he toured the property this morning and that although it was vastly improved, it look like a slum. He commented that although Mr. Roddy has been acting in good faith, there has been no rental of the apartments since 2002, which indicated that the use had been abandoned.

Responding to Council Member Diamond, Zoning Administrator Castro indicated that there would have to be another adaptive reuse of the building such as retail on the first floor, offices on the second and third floor, and maybe one residential unit. He noted that smaller office uses are in high demand because there is not as much overhead; he said staff was attempting to provide some other adaptive reuse other than the nonconforming use with the density as was heard today.

Council Member Kleid commented that he was at two of the Code Enforcement Board hearings, which was very frustrating because Mr. Roddy stated that he would continue his work, although it was very slow. Mr. Kleid indicated that the renovation of this building has taken over seven years and is not yet completed. He noted that the question was not a Code Enforcement issue, but that there was compelling evidence to the fact that he has abandoned the use.

President Pro Tem Coniglio indicated that as Mr. Castro stated that the business tax receipt did not quantify as use of the property, the commercial site lost its ability to operate in their current usage based on the two year lapse and the loss of the grandfather clause.

Council Member Wildrick noted that he was disappointed that there was no firm time and action calendar provided by Mr. Roddy. He said that this could go on forever, and as a result he was not sympathetic to him.

Zoning Administrator Castro indicated, for the record, that the building permits that were issued were directly related to remedying the Code Enforcement action and not to perpetuate the apartments until a determination was received on the appeal.

Motion made by Council Member Diamond to uphold the administrative decision that the nonconforming residential use located at 332 South County Road had been abandoned by discontinuance for a period of two years.

President Rosow passed the gavel to President Pro Tem Coniglio.

President Rosow seconded the motion. On roll call, the motion carried unanimously.

2. Appeal of Administrative Decision that Valet Parking Operations are Not Permitted at the Nonconforming Parking Lot Located at 176 Sunset Avenue. [John Page, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Page provided an overview of the appeal. He noted that the parking lot is situated in a residentially zoned district and that valet parking would intensify the nonconforming use.

Zoning Administrator Castro noted that it was a grandfathered use since the 1950's and has been used by commercial tenants, including the Post Office. Staff determined that if valet businesses were allowed to use the property, it would be in conflict with the R-C zoning district, which did not allow any quasi-commercial or commercial uses in the district. He continued that the code stated in the nonconforming section that "no person shall use a nonconforming use as a grounds to intensify the use or allow more uses that are not permitted in the district in which it is located".

President Pro Tem Coniglio recused herself, as owner of Nick & Johnnies and Cucina del Arte, which was mentioned in the backup. She provided a Conflict of Interest form 8b, and left the dais.

Ex-parte communication was not declared by member of the Town Council.

Jay Dinger, manager of Leverett House Condominium, 120 Sunset Avenue, commented all members of the board unanimously opposed the granting of valet parking to the lot. He asked if the Town Council was inclined to approve this, the board would ask for a deferment in order to retain counsel.

Responding to Council Member Diamond, Mr. Castro indicated that approval of valet parking would intensify and worsen the traffic in the neighborhood, as there would be several

commercial property owners that would lease valet operations to use the parking lot, which go as late as 2:00 or 3:00 a.m. It is currently used sporadically at night.

Responding to President Rosow, Mr. Castro indicated that an administrative appeal does not require noticing any property owners.

Motion made by Council Member Diamond that the administrative decision that valet parking operations are not permitted at the nonconforming parking lot located at 176 Sunset Avenue, be upheld. Council Member Wildrick seconded the motion.

Town Attorney Randolph asked that, for the record, the Town Council hear from Mr. Castro the notification he provided Attorney Harvey Oyer. He pointed out that there was a three page letter from Mr. Oyer setting forth his position regarding this.

President Rosow noted that the Town Council had received and read the letter.

Mr. Castro, and for the record, stated that he contacted Attorney Oyer regarding the date and time of the meeting in addition he emailed the backup information of the meeting, which included the staff memorandum which contains the date of the meeting.

Council Member Wildrick indicated that Mr. Oyer's letter was on page 317 of the backup.

Upon roll call, the motion carried 4-0, with President Pro Tem Coniglio recused.

Mr. Castro indicated that Attorney Oyer had been contacted and that there had been a discrepancy in the first email that was sent to him in regards to the day and date of the meeting. The second email that was sent had the correct date.

* * * * * * * * *

Clerk's Note: The following reconsideration of this item was heard after Item IX.C.4.b.

Motion made by Council Member Kleid to reconsider the previous motion upholding the administrative decision that valet parking operations are not permitted at the nonconforming parking lot located at 176 Sunset Avenue. Council Member Diamond seconded the motion.

President Pro Tem Coniglio recused herself, as owner of Nick & Johnnies and Cucina del Arte, which was mentioned in the backup. She provided a Conflict of Interest form 8b, and left the dais.

Upon roll call, the motion to reconsider carried 4-0, as President Pro Tem Coniglio recused herself.

Attorney Oyer, on behalf of Johnstone Capital Partners I, LLC, provided an overview of his client's position regarding the use of valet parking at 176 Sunset Avenue.

Mr. Dinger stated that the Leverett House Condominium Board of Directors unanimously decided to oppose valet parking based on experience in exiting the dead end street and the difficulty of intensification of use that would be added to the traffic.

Discussion occurred among the Town Council and Attorney Oyer. Several of the following issues were addressed:

- Historically, there was use of a parking attendant and a structure, which was later removed;
- Valet parking had been requested by nearby restaurants as a result of the construction of the new Publix and loss of parking spaces.
- Currently, the majority of daytime parking spaces was leased to U.S. Post Office employees.

Responding to Town Attorney Randolph, President Rosow agreed to make Zoning Administrator Castro's previous remarks part of this hearing.

Mr. Castro noted that it was not just the residents of the Leverett House that were impacted, but also single family homes that abut the property, are across the street or behind it. He added that it is an intensification of use that could not be used as the basis of a nonconforming use for granting businesses or expansion of business operation, which is a commercial and residential pay parking lot.

Attorney Oyer indicated that if staff's only concern is the impact on the neighborhood, he would meet with all the residents in order to make the neighbors comfortable with the valet parking.

Town Attorney Randolph stated that the concern was not only the impact on neighborhood, but that it is an expansion of a nonconforming use, which is the decision of the administrative official, and needed to be ruled right or wrong in that regard.

Motion made by Council Member Kleid to uphold the administrative decision that valet parking operations are not permitted at the nonconforming parking lot located at 176 Sunset Avenue. Council Member Wildrick seconded the motion. On roll call, the motion carried 4-0, as President Pro Tem Coniglio was recused.

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less than 15 Minutes

None

2. New Business - Less than 15 Minutes

a. SITE PLAN REVIEW #1-2011 WITH VARIANCES The application of French Villas Association, Inc.; relative to property commonly known as 240 North County Road; described as FRENCH VILLAS OF PALM BEACH, A CONDOMINIUM, ORB 1588, Pg 324; located in the R-C Zoning District. The applicant is requesting a Site Plan Review to modify the existing site plan to add 200 sq. ft. awning to cover a portion of the parking lot. Variances are requested to: add 360 sq. ft. of covered parking with a rear setback of 2.4 ft in lieu of the 15 ft. minimum required; add 200 sq. ft. of covered parking which would increase lot coverage from 32.13% existing to 32.75% in lieu of 30% minimum required. [Attorney: Peter S. Broberg][ARCOM Recommendation: Approval of the variance will not cause negative architectural. Carried 6-1.]

Ex-parte communication was declared by: Council Member Kleid, Council Member Wildrick, and President Pro Tem Coniglio with Attorney Peter Broberg who advanced the position of his client.

Attorney Broberg, on behalf of the French Villas Association, Inc., provided an overview of the applicant's request.

Zoning Administrator Castro provided staff's comments. He commented that ARCOM recommended approval based on the condition that a 10' hedge be provided on the west property line. He noted that a neighbor objected to the project, as his apartment abutted the property to the west and was concerned about his view.

Discussion occurred among the Town Council regarding the height of the proposed and existing awnings.

Motion made by Council Member Diamond that Site Plan Review #1-2011 with Variances be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, items 1-11; and that the Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, with the condition that a 10' hedge be maintained in perpetuity. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

b. SITE PLAN REVIEW #2-2011 WITH SPECIAL EXCEPTION & VARIANCE The application of HoJo Partners, LLC.; relative to property commonly known as 2880 S. Ocean Blvd.; described as 23 / 24-44-43, SLY 150 Ft of ELY 256.9 Ft of filled land Lyg W of SR A1A & N of Lake Ave being Pt of Gov Lot 1 SEC, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a Site

Plan Review to allow for the existing building (which is to be renovated) and parking areas to remain, except for the elimination of one parking space in order to add two handicap parking spaces and the relocation of the existing dumpster enclosure as indicated on the plans, all in connection with the renovation and use of an existing building that is approximately 3,835 sq. ft. in area. A Special Exception is requested to allow a business to occupy more than 2,000 sq. ft. allowed by Code. This request is a reduction of the previous approval. A Variance is also requested to allow for an office use on the ground floor. [Attorney: Robert E. Deziel, P.A.]

Ex-parte communication was declared by:

- Council Member Diamond, President Rosow, and Council Member Wildrick talked to Attorney Robert E. Deziel, who lobbied for his client.

- Council Member Diamond's wife was the former owner of the property and he is familiar with it.

- Council Member Kleid did not have a present conversation, but had previous conversations with Attorney Deziel. Mr. Kleid's wife is a Real Estate Agent, and Town Attorney Randolph finds no conflict of interest regarding this issue.

Attorney Deziel, representing the applicant, HoJo Partners, LLC, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He indicated that staff recommended repaving and restriping the parking lot to make it presentable. Office use on the first floor would be appropriate, as the area was not conducive to retail.

Jimmy Ryan, 2860 S. Ocean Blvd., Chairman of the Palm Beach Citizen's Association, and neighbor asked that the applicant reconsider as the building was functionally obsolete. He commented that only painting and placing shrubs would not enhance the gateway to the neighborhood; they wanted it to be developed.

Discussion occurred among the Town Council, Attorney Deziel, and staff regarding ARCOM's denial of the previous requests to develop the property. Council Member Wildrick noted that it was an important entrance to the Town. Attorney Deziel indicated that his client did not want to develop the building, and did not want to return to ARCOM or revisit the old application. He said that there was a difference in the process in developing a new building and renovating an old building.

Attorney Deziel provided a presentation of the exterior appearance of what had already been approved by the Town.

Responding to Council Member Kleid, Attorney Deziel clarified that there would be new, impact resistant windows, a new roof, all new mechanical equipment, electrical system, and plumbing system.

Attorney Deziel noted that he would meet with the neighboring property owners in order to obtain their input on the property.

Motion made by Council Member Diamond that Site Plan Review #2-2011 with Special Exception and Variances be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, items 1-11; Special Exception #2-2011 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; and that the Variance #2-2011 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, with conditions set forth by staff to repave and restripe the parking lot. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

c. VARIANCE #1-2011 The application of Robert and Helen Ficalora; relative to property commonly known as 221 Ocean Terrace; described as Lot 12 and East 10 feet of Lot 13, OCEAN TERRACE, according to the Plat thereof, as recorded in Plat Book 20 at Page 640, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Variance to allow a point of measurement of 10.97 feet National Geodetical Vertical Datum mean sea level ("NGVD") for cubic content ratio in lieu of the 8.63 feet NGVD maximum allowed to construct a 510 square foot one story addition and a 1,342 square foot second story addition. If this calculation is taken from the Town's point of measurement, which is 18 inches above the road, the proposed CCR would be 4.15 in lieu of the 3.98 maximum allowed. [Attorney: Maura A. Ziska][ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts. Carried 6-1.]

Ex-parte communication was declared by:

- Council Member Diamond, Council Member Kleid, and President Rosow each had a conversation with Attorney Maura Ziska, who advocated the position of her client.

Attorney Ziska, representing Mr. and Mrs. Ficalora, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He noted the condition of approval to maintain a hedge in perpetuity in height to screen the house.

Responding to President Pro Tem Coniglio, Mr. Castro indicated that there was not a limit to how many times a filing deadline could be missed and re-presented. He noted that the tests of the code would be required, as there could be changing conditions, or the Council could make a different decision. He said there were several projects today that had expired.

President Pro Tem Coniglio expressed concern that in the process of re-application, there is a loss of continuity for the neighbors.

Motion made by President Pro Tem Coniglio that Variance #1-2011, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

d. VARIANCE #2-2011 The application of Domenica L. Falcione; relative to property commonly known as 970 North Lake Way; described as lengthy legal description on file; located in the R-B Zoning District. The following variances are being requested: To allow air conditioning equipment (cooling tower) with a north side yard setback of 1.16 feet in lieu of the 12.5 foot minimum required; to allow a front setback of 20.25 feet in lieu of the 25 foot minimum required; to allow the air conditioning equipment to be higher than the screening wall which is not permitted. [Attorney: James R. Brindell]

Ex-parte communication was declared by:

- Council Member Diamond indicated that he had discussed this issue previously with Attorney James Brindell.
- Council Member Kleid, President Rosow, and Council Member Wildrick had a conversation with Attorney Brindell and he advanced the position of his client.

Attorney Brindell, on behalf of Domenica L. Falcione, provided an overview of the request.

Planning, Zoning and Building Director Page provided staff's comments. He noted that last year, a permit was submitted for approval, and as it was a replacement system, a site plan was needed in order to confirm zoning compliance.

Responding to Council Member Diamond, Mr. Castro noted that there was a major renovation on the house, no record of the permit for the original equipment could be found. At the time that the original equipment was installed, site plans were not required, and the permit would not have been issued without a variance.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, that Variance #2-2011, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. On roll call, the motion carried unanimously.

e. SPECIAL EXCEPTION #1-2011 WITH SITE PLAN REVIEW AND VARIANCES The application of Mary T. Khawly; relative to property commonly known as 888 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A/B-A Zoning Districts. The applicant is requesting a Special Exception to construct a 414 square foot

beach cabana on property across the street from the main residence, which is in the B-A Zoning District. Variances are requested to construct a beach cabana that is on a lot with frontage of 58 feet in lieu of the 125 feet of frontage required in the R-A Zoning District; to construct a beach cabana to be 22.66 feet x 26.25 feet in lieu of the 20 foot by 25 foot maximum allowed; to have an ocean vista of 50% that is non-continuous in lieu of a continuous 50% ocean vista. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond, Council Member Kleid, and President Rosow, each had a conversation with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, representing Mr. and Mrs. Khawly, provided an overview of the request and circumstances of the time extension.

Zoning Administrator Castro provided staff's comments and explained that the time that expired was in commencing the work on the cabanas; not commencing the work on the property, but on the approval of the variances that were granted. Staff recommended that if same project was approved, it meets all previous plans and conditions that were approved previously by the Town Council.

Council Member Kleid noted that there was an ordinance for ocean vistas so as not to impair the view. In this instance, the applicant wants the following three variances: (1) place a cabana on a smaller parcel of land than required by the ordinance; (2) on the smaller parcel of land place a larger cabana than required; (3) place the larger cabana on the smaller parcel of land and violate the 50% rule, which is a continuous vista of 50%. He indicated that if the ordinance was to be eroded, than the Town should not have the ordinance.

Zoning Administrator Castro indicated that the requirement could not be met because the lot was only 50' wide. The cabana is larger than allowed by code. Staff expressed concern, when this case was last heard over year ago, that there was no hardship to meet the requirements relative to the maximum size of a cabana. It was reduced a little bit. The dilemma was that meeting the 10' side yard setbacks on either side, would not be continuous, because the width of the cabana was over 16 ½ feet to meet a continuous vista requirement on a 50' lot.

Attorney Ziska responded that the hardship was inherent with the size of the property.

Responding to President Pro Tem Coniglio, Mr. Castro noted that the cabana of 20' x 25' in dimension was larger than the 414 square feet that was proposed; the hardship was the design of the cabana, as it is a circular shape. Today, they would not even be allowed a cabana because the minimum width is not met.

President Rosow noted that it was approved previously by the Town Council.

Motion made by Council Member Diamond that Special Exception No. 1-2011 with Site Plan Review and Variances shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; that Site Plan Review 1-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, items 1-11; and that Variance #1-2011 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Wildrick seconded the motion. On roll call, the motion carried 4-1, with Council Member Kleid dissenting.

f. SPECIAL EXCEPTION #2-2011 The application of 128 Ocean View LLC; relative to property commonly known as 11 Lagomar Road; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a Special Exceptions to allow a set of driveway gates on Ocean View Road (which is a cul-de-sac) with a 5.25 foot setback from the street pavement in lieu of the 18 foot minimum required and to allow a set of driveway gates on Lagomar Road (which is a cul-de-sac) with a 10.66 foot setback from the street pavement in lieu of the 18 foot minimum required. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond stated that, to correct the record, the prior ownership problem refers to this property, not the prior 2880 Southern Boulevard property, as this property was owned by his wife, and sold to the current owner several years ago and that he is very familiar with it; Attorney Ziska spoke about it with him.

- Council Member Kleid and President Rosow each had a conversation with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of the applicant, provided an overview of the request.

Zoning Administrator Castro provided staff's comments.

Motion made by President Pro Tem Coniglio that Special Exception No. 2-2011 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

g. SPECIAL EXCEPTION #5-2011 WITH SITE PLAN REVIEW The application of The Town of Palm Beach; relative to property commonly known as 420 S. Lake Dr. (Lakeside Park); described as lengthy legal description on file; located in the R-B Zoning District. Request for Special Exception with Site Plan Review to construct a new 805 sq. ft. D-7

Storm Water Pump Station containing a 1000 KW generator and controls to be located at the south end of Lakeside Park. In addition, the request includes constructing two new wet wells below grade immediately adjacent to the existing D-6 and D-7 wet wells. The wet wells are part of an upgrade to the storm water facilities for the downtown Palm Beach commercial district and adjacent residential homes and condos. [Contact: H. Paul Brazil, Director of Public Works]

Zoning Administrator Castro provided staff's comments. He noted that any public structure that serves the need of the public and the Town, including the much needed drainage improvements, requires a quasi-judicial hearing in front of the Town Council. This process is required, which includes neighbor notification.

Motion made by President Pro Tem Coniglio that Special Exception No. 5-2011 with Site Plan Review shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; that Site Plan Review No. 5-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, items 1-11. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

3. Old Business - More than 15 Minutes

None

4. New Business - More than 15 Minutes

a. SPECIAL EXCEPTION #3-2011 WITH VARIANCES The application of Worth Avenue Associates; relative to property commonly known as 150 Worth Avenue; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Special Exception to modify the special exception for the arcade which was approved in 1998 (Site Plan Review No. 4-98 with Special Exception and Variance) to allow for the addition of signs. Variances are requested to allow signs to be erected within the right-of-way of Worth Avenue and for those signs to exceed the allowable sign area for Gucci. All of Gucci's signs will total 28.92 square feet, while the code allows a 20 square foot maximum. [Attorney: James R. Brindell][ARCOM Recommendation: Implementation of the variance will cause negative architectural impacts. Carried 7-0. ARCOM unanimously denied the signs.]

Ex-parte communication was declared by:

- Council Member Diamond, Council Member Kleid, and Council Member Wildrick had a conversation with Attorney Brindell and he advocated the position of his client.

- President Rosow had a conversation with Attorney Brindell who advocated the position of his client, and he viewed the façade of the building.

- President Pro Tem Coniglio had a passing conversation with Attorney Brindell, a telephone conversation with property owner Mr. Goodman, Mr. Moore, a representative, and Jeff Smith, chairman of ARCOM.

Attorney Brindell, on behalf of 150 Worth Avenue, provided an overview of the request.

Zoning Administrator Castro provided staff's comments.

Attorney Brindell noted that ARCOM did not like the idea of signs on the face of the arcade, as it would not look good with the architecture.

Administrative Assistant Boyles administered the oath to all those who would be providing testimony.

Bob Saffran, on behalf of 150 Worth Avenue, indicated that discussions with some of the tenants occurred regarding additional signage.

Discussion occurred among the Town Council and Attorney Brindell regarding the appearance of the signage along with the bougainvillea. Several of the following comments were made:

- The applicant should return to ARCOM in order to address the additional signage, architectural element requirements, and the bougainvillea;
- It would be better to wait until the bougainvillea was fully grown;
- Properly trained bougainvillea would not interfere with names on stores signs when it is grown across the arches;
- A completed presentation was needed; and
- The applicant should work with ARCOM.

Motion made by Council Member Wildrick to defer Special Exception #3-2011 with Variances and to direct the Architectural Commission work with 150 Worth Avenue on signage. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

(1) Appeal of ARCOM Decision B-070-2010, 150 Worth Avenue (Per Letter Dated December 22, 2010, from James R. Brindell).

President Rosow indicated that the appeal would be held in abeyance.

b. SPECIAL EXCEPTION #4-2011 WITH VARIANCES The application of Coco Palm Beach; relative to property commonly known as 290 Sunset Avenue and 139 North County Road; described as lengthy legal description on file; located in the C-TS Zoning District.

The applicant is requesting to modify the previously approved Special Exception #10-2002 to relocate the 30 off-site, shared supplemental parking spaces from 255 Sunset Avenue to 139 North County Road. A Variance is requested to allow the off-street, shared supplemental parking spaces to be 1,150 feet from the restaurant door in lieu of the 500 foot maximum allowed. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by: Council Member Diamond, Council Member Kleid, and President Rosow, had a conversation with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of Coco Palm Beach, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He noted staff's concern was that there were four signalized lights from the parking lot to the front of the restaurant and that it would take a considerable amount of time for valet service. He added that there were limited parking locations with limited abilities based on construction of the new Publix; therefore, staff recommended that if the Town Council approves it, to allow six months for a trial and then return to the Council to address any issues with the Police Department or Code Enforcement.

Jay Dinger, Leverett House Condominium, 120 Sunset Avenue, indicated that the issue was similar to the next one that would be heard, which was the impact of valet parking service at a parking lot that is across the street from the other parking lot. He asked that a decision be deferred to allow him time to review it with counsel or his board.

Discussion among the Town Council, staff, and Attorney Ziska occurred. Several of the following issues were addressed:

- Suggestion that the Town Council allow a six-month trial period with no valet parking;
- Other alternatives for parking such as the Fedco lot and Biltmore Galleria;
- If the requirement to have 30 off-site parking spaces was eliminated, the Restaurant could still have valet parking if they had a valid parking permit from the Police Department, which identified the location of the parking, usually on the street.

Mr. Castro provided a brief history of the parking situation at Coco Palm Beach and the impact on the seating. He noted that next month there would not be any parking and that the Restaurant was in a tight spot.

President Rosow indicated that the Town Council could approve the valet parking with the requirement to come back in May and provide an update; at the same time, a report from the Police Department, Code Enforcement, and the residents as to how it has worked out and if there were any issues.

Motion made by Council Member Diamond that Special Exception No. 4-2011 with Variances shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; that the Variance be granted and found, in support thereof, that

all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met; with recommendation of returning to the Town Council meeting in May 2011 with a report from the Police Department, Code Enforcement, and any complaints from residents. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

Planning, Zoning and Building Director Page noted that notification would go out to the abutting property owners.

* * * * * * * * *

Clerk's Note: Please see Item IX.A.2., for further discussion and reconsideration, regarding the Appeal of Administrative Decision that Valet Parking Operations are Not Permitted at the Nonconforming Parking Lot Located at 176 Sunset Avenue.

D. Other

1. Mediation Report Re: Stephen and Jill Karp, 1100 North Ocean Boulevard. [John C. Randolph, Town Attorney]

Town Attorney Randolph provided an overview of the Mediation Report. He indicated that the Karp's presented an alternative plan, which was reviewed and accepted by President Rosow and Jeffrey Smith of the Architectural Commission (ARCOM). The recommendation of the parties was that the matter be presented to the Town Council who could have the plan presented to ARCOM with their recommendations to be heard at the February Town Council meeting.

President Rosow recommended that the Council review the Report and decide whether or not to send it to ARCOM for their review. He noted that Jeff Smith was pleased with the Karp's plan and that ARCOM could make a recommendation that the plans were appropriate.

Attorney James Green, representing John and Marianne Castle, requested a postponement of this matter as Attorney Paul Rampell, and Architect Thomas Kirchhoff, were unable to attend today's meeting.

President Rosow indicated that, as this matter had been argued for months, he was disinclined to grant a deferral. He said that arguments were heard before ARCOM and the Town Council, and it was time to bring the matter to a conclusion.

Responding to Council Member Diamond, Attorney Green commented that the Mediation Report was inaccurate and did not contain the plans proposed by the Castle's, which had not been presented before the Town Council. He stated that there were legal issues that were identified in their response to the Report.

Town Attorney Randolph advised that, if the Council thought it was necessary, it could make the determination whether or not to send it back to mediation. He stated that all the facts are before the Town Council, representatives of the Town were at the mediation, and the Report is the culmination of that hearing; there is no obligation on the Town Council's part to send the matter back for more mediation.

President Rosow noted that the plans referred to by Attorney Green were shown at the Mediation, which was reviewed by the Town's Attorney, Mr. Smith and President Rosow.

Council Member Wildrick and Council Member Kleid each indicated that that the matter should be remanded back to ARCOM.

Attorney Green submitted, into the record, a petition signed by 265 residents of the Town that were in support of the Castle's.

Town Attorney Randolph advised that the issue was whether to accept the recommendations of the Mediation Report, and then there would be no reason to remand because the recommendation of the Mediation Report was to submit it back to ARCOM and obtain their comments. He said that the issue would come back to the Council.

Motion made by Council Member Wildrick to accept the Mediation Report. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

President Rosow requested that Historic Consultant Jane Day review the Castle's property for landmarking eligibility.

2. Presentation by Dr. Jane Day on the 2010 Historic Sites Survey. [John Page, Director of Planning, Zoning, and Building]

Historic Consultant Day presented the updated 2010 Historic Sites Survey.

Ms. Day stated that she was hoping to get a letter from the new Mayor to lobby the state legislature to fund the grants, as the Town was ranked number 13 out of 57 applicants. If funded, the Town would receive $350,000 toward restoration of the Memorial Fountain.

Ms. Day suggested passing an archeological ordinance, as there had been two or three sites in the last few years, in order to have all control of the Town's resources to be local, rather than just the historic preservation element in the Comprehensive Plan. She noted that she had been working on the Ordinance with Town Attorney Randolph.

Responding to President Rosow, Ms. Day indicated that the Landmarks Preservation Commission members will provide a list of top 20 properties to be considered for landmarking, which would be scaled down to a top 10.

Responding to President Pro Tem Coniglio, Ms. Day indicated that in the Sunshine at the Landmarks Preservation Commission meeting, the members will vote on properties to be considered. Processing properties without owner objection takes less time than one that does have objections. She said she hopes to be done this season with the 10 selected.

Responding to Council Member Diamond regarding the objections to landmarking the three Breakers cottages based on a prior agreement for Planned Unit Development, Town Attorney Randolph stated that he was not prepared to give an opinion until the Landmarks Preservation Commission meeting occurs.

Alexander Ives, Preservation Foundation of Palm Beach, thanked Ms. Day, the Town Council, President Pro Tem Coniglio and future Mayor for supporting this program.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to accept the 2010 Historic Site Survey. On roll call, the motion carried unanimously.

X. ANY OTHER MATTERS

A. Agenda Change

President Rosow commented that he would like to remove from the Agenda, the wording in the items that read "Less than 15 Minutes" and "More than 15 Minutes", as it no longer has value.

It was the consensus of the Town Council to remove the wording from the Agenda items that read "Less than 15 Minutes" and "More than 15 Minutes".

B. Boards and Commissions

Discussion regarding Boards and Commissions occurred among the Town Council Members. President Pro Tem Coniglio noted that the process was breaking down and that the Town Council needed to make decisions regarding the benchmark of criteria of being helpful, courteous and flexible. Council Member Kleid suggested having a general discussion about giving direction and working with the residents. President Rosow indicated that ARCOM, the Landmarks Preservation Commission, and the Code Enforcement Board could be invited to a Town Council Meeting for an open discussion regarding the processes at their meetings.

XI. ADJOURNMENT

There being no further business, the January 12, 2011, Town Council Meeting was adjourned at 1:38 p.m.

APPROVED:

_____

David A. Rosow
Town Council President

ATTEST:

_____

Jane Struder
Acting Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent Agenda

Agenda Title

Approval of Major Matters Considered by the Architectural Commission at its Meeting of January 26, 2011.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated February 1, 2011 from John S. Page, Director of Planning, Zoning and Building
- Minutes of the Architectural Commission meeting of January 26, 2011

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: Approval of the Architectural Commission Meeting Minutes of January 26, 2011

Date: February 1, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the major items that were approved by ARCOM at the regularly scheduled meeting of January 26, 2011.

BOARD OR COMMISSION RECOMMENDATION

The Architectural Commission recommends that the Town Council approve the major items which were considered at the regularly scheduled meeting of January 26, 2011.

GENERAL INFORMATION

These minutes are submitted to the Town Council for approval pursuant to Chapter 18-177 of the Town of Palm Beach Code of Ordinances.

Attachment

JSP:cmd

MINUTES
ARCHITECTURAL COMMISSION
IN THE TOWN COUNCIL CHAMBERS
2ND FLOOR, TOWN HALL
360 SOUTH COUNTY ROAD, PALM BEACH

WEDNESDAY, JANUARY 26, 2011, 9:00 a.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording of the meeting by contacting Cindy Delp, Secretary to the Architectural Commission at (561) 227-6408. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. CALL TO ORDER (8:59:03 a.m.)

II. ROLL CALL (8:59:37 a.m.)

PRESENT
Jeffery W. Smith, Chairman
William J. Strawbridge, Jr., Vice Chairman
Leslie C. Diver, Member
Kenn Karakul, Member
Nikita Zukov, Member
Robert J. Vila, Member
Ann L. Vanneck, Alternate Member (voting member today)
Peter I. C. Knowles II, Alternate Member

ABSENT
Samuel M. Boykin, Member (Excused)
Martin D. Gruss, Alternate Member (Unexcused)

Staff members present were John C. Randolph, Town Attorney (present for latter part of meeting) John S. Page, Director of Planning, Zoning & Building, John Lindgren, Planning Administrator, and Cynthia Delp, Secretary to the Architectural Commission

III. PLEDGE OF ALLEGIANCE (8:59:39 a.m.)

IV. APPROVAL OF THE MINUTES FROM THE DECEMBER 17, 2010 MEETING (8:59:59 a.m.)
MOTION BY MS. DIVER FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.

V. APPROVAL OF THE AGENDA :
MOTION BY MS. DIVER FOR APPROVAL OF THE AGENDA.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.

VI. ADMINISTRATION OF THE OATH TO PERSONS WHO WISH TO TESTIFY (9:00:27 a.m.) Mrs. Delp administered the oath at this time and throughout the meeting as necessary.

VII. OTHER BUSINESS: (9:00:44 a.m.)

VIII. PROJECT REVIEW (9:00:47 a.m.)

A. MAJOR PROJECTS - OLD BUSINESS **(9:00:50 a.m.)**
B - 053 - 2010 New Single Family Residence
Address: 108 El Mirasol, Lot 7 & 8, El Mirasol
Applicant: Neeta and Anand Khubani
Architect: Roger Hansrote
Project Description: New two-story single family residence with 3 garages, 8 bedrooms, 9 baths, 2 half baths, breezeway, porte cochere and pool (13,869 square ft. air conditioned) Roof Material: Terra Cotta Barrel tile; CBS construction; Color-beige; Trim-cast stone; Shutters-beige (Rolladen)

After hearing the project at the October meeting, the project was deferred to the November meeting. At the November meeting, the project was deferred to December at the request of the attorney for the applicant. At the December meeting, there was a motion for deferral of the project based upon the members' comments made at that meeting.

Call for disclosure of ex parte communication : Several members made ex parte declarations.

Architects Roger Hansrote and Jeff Beer were present, with a model, on behalf of the project. Mr. Beer reviewed the changes which had been done since the last meeting which were meant to address the comments made at the last meeting. Some of those changes are fenestration changes to the façade and stair tower, lowering and widening the chimneys, balcony changes, and removal of the coquina from the garage façade in favor of stucco.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.

MOTION SECONDED BY MR. VILA.
MOTION CARRIED UNANIMOUSLY.

B - 060 - 2010 Aviary
ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCE
Address: 309 Worth Avenue
Applicant: Trillion Inc., Tatiana Van Zandt
Architect: The Lawrence Group
Project Description: Addition of 65.72 sq. ft. aviary to existing Trillion store

Variance: Variance for rear setback 0 ft. instead of 4.75 ft. existing and 10 ft. required and variance for lot coverage of 76.67% instead of 76.07% existing and 75% permitted

> Please note that at the November meeting, there was a motion that implementation of the proposed variance will not cause negative architectural impacts to the subject property. That motion carried 4-3. There was a second motion for deferral of the architecture to the December meeting.

At the December meeting this project was not heard. It was deferred to the January meeting at the request of the architect.

Call for disclosure of ex parte communication: Mr. Karakul made an ex parte declaration.

Architect Eugene Lawrence presented revised plans to make the aviary more playful.

MOTION BY MR. KARAKUL FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.

B - 061 - 2010 Addition
Address: 1170 North Ocean Boulevard
Applicant: Jan and Tom Moloney
Architect: SKA Architects/Patrick W. Segraves
Project Description: Addition of sunroom at existing west terrace, new pool, new site walls, new roof over existing east terrace

Please note that after reviewing the project at the November meeting, the project was deferred to the December meeting. At the December meeting, the project was not heard, and was deferred to January at the request of the architect.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Architect Pat Segraves and Landscape Architect Alan Stopek of Efflorescence presented revised plans. The project, as revised, includes, but is not limited to a new site wall, a re-do and move of an existing site wall, new lap pool in rear,

walkways, new covered loggia with awning in the rear, new terrace, with open railing, in rear with steps leading down to pool, three white awnings on the east elevation, and a re-do of the railing at the balcony. Mr. Stopek presented the preliminary landscape plan only, reviewing the proposed landscape material, including dense screening from neighbors, expanses of lawn, an alley of trees on the south side, and the hardscape aspect of moving the existing driveway a bit to the south.

Commission comments: Do more plantings on the outside of the wall, especially at the entrance…too bland as proposed; the new railing is very busy; make sure the white awnings do not yellow; the awnings on the front of the house should not hide the fascia board; the driveway, as is, is only usable if you back out onto North Ocean Boulevard, which is very dangerous; the driveway is grandfathered as is, but you are modifying it, so the existing conditions should not be perpetuated; the driveway material is noted differently on different plans.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED 6-1, WITH MR. SMITH OPPOSED.

B - 066 - 2010 Demolition and New Residence
Address: 1240 North Ocean Boulevard
Applicant: Mr. and Mrs. Matt Smith
Architect: MP Design & Architecture, Inc.
Project Description: Demolition of existing residence; New two story shingle style residence, pool, hardscape and landscape; exterior renovation to existing cabana

Mr. Smith re-stated his previously declared conflict with this project as passed the gavel to Mr. Strawbridge. (Mr. Knowles- voting member for this project.)

This project was not heard at the December meeting, but was deferred to January at the request of the architect.

Call for disclosure of ex parte communication : Several members made ex parte declarations.

Michael Perry of MP Design & Architecture first provided a demolition report relative to the existing residence. Keith Williams of Mario Nievera Design Inc. discussed the landscape materials which will remain at the site, such as large Seagrapes, a nice Banyan tree, perimeter hedging, and Travelers Palms. He noted that the majority of trees will be kept as is, or re-used.

MOTION BY MR. ZUKOV FOR APPROVAL OF THE DEMOLITION WITH THE USUAL DEMOLITION CONDITIONS RELATED TO SODDING AND IRRIGATING.

MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.

Mr. Perry discussed his design for a two-story shingle style residence featuring gambrel style roofs, hip dormers on all second floor windows, and fieldstone chimneys. Breezeways connect the main house to a garage structure on the North side and a game barn on the South side. A long lap pool (16 ft. wide x 55 ft. long) will be placed on the East side of the property. There is an existing pool cabana at the site which will be shingled. Mr. Perry reviewed the site plan, floor plans and elevations.

Keith Williams of Mario Nievera Designs presented the landscape and hardscape according to the plans. Proposed materials include: Belgian block for the main driveway in a herringbone pattern, coral, Belgian block, and limestone for the motor court and pathways, Belgian block for the service drive, limestone stairs, fieldstone retaining walls, and Ipe deck material. He also discussed the landscape material to be added to the site to create a loose tropical feel. Mr. Williams noted that no piers, walls or gates are being presented today. The applicant will return with those items. He stated that a variance is required relative to perimeter landscaping due to the specific conditions at this site.

Commission comments: So refreshing to see a non-Mediterranean design; proportion of chimneys is off; do not want to destroy views, so landscape fine as is, or with some additional; shingle style is refreshing; chimney slant is odd; windows appear too important on East elevation; detail wrong on French doors for shingle house; fluted columns are a mistake…should be simpler; a single, wide, solid front door would be better with no arch; dormers are a bit big; simplify fenestration details; circle window is too important; simpler columns for pavilion; make outdoor fireplace more rustic; this is an opportunity to relate beach cabana to house; and study the three dormers on the ocean side and make them hips. Mr. Perry defended several of his design detail choices.

Mr. Lindgren noted that the commission will need to make a recommendation to the Town Council relative to the variance requested for landscaped open space.

MOTION BY MR. ZUKOV THAT IMPLEMENTATION OF THE PROPOSED VARIANCE WILL NOT CAUSE NEGATIVE ARCHITECTURAL IMPACTS TO THE SUBJECT PROPERTY.

MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.

MOTION BY MR. KARAKUL FOR APPROVAL OF THE PROJECT AS PRESENTED, WITH ADJUSTMENTS AT THE CHIMNEY IN TERMS OF THE WIDTH AND STRENGTH AND THE ANGLE, AND THE ADJUSTMENTS TO THE THREE DORMERS ON THE OCEAN SIDE TAKING THEM BACK TO HIP; AND KEEPING THOSE WINDOWS LESS THEATRICAL.

MOTION SECONDED BY MR. ZUKOV.

MOTION AMENDED BY MR. KARAKUL TO INCLUDE ADDING FENESTRATION TO THE BEACH CABANA, AND REVIEWING DETAILS IN GENERAL TOWARD SIMPLIFICATION.

AMENDMENT ACCEPTED BY SECONDER.
MOTION CARRIED UNANIMOUSLY.

B - 067 - 2010 New Residence
Address: 212 Nightingale Trail
Applicant: Robmar Realty, LLC
Architect: MP Design & Architecture, Inc.
Project Description: New one and two story residence, pool, landscape & hardscape

After hearing this project at the December meeting, there was a motion for deferral to the January meeting.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Michael Perry of MP Design & Architecture, Inc. returned with revised plans showing the originally proposed 18 ft. garage door now changed to two 9 ft. doors with a column between; library window re-sized; removed lites at front door; fenestration, shutter, and column changes; and, strengthened the details on the gable ends.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. VILA.
MOTION CARRIED UNANIMOUSLY.

B. MAJOR PROJECTS - NEW BUSINESS **(10:16:55 a.m.)**
Let the record show that at this point, 10:18 a.m., there was a short recess.

B - 001 - 2011 Generator structure
Address: 420 South Lake Drive
Applicant: Town of Palm Beach
Architect: Mock Roos & Associates, Bridges & Marsh
Project Description: Construction of an 805 square foot structure to house the generator and controls for the D-7 pump station

Call for disclosure of ex parte communication : None

Architect Mark Marsh of Bridges Marsh & Associates represented the Town regarding this presentation for Town infrastructure improvements. The project includes the new generator structure at the extreme south end of the park, the removal of the control building in the middle of the park, and new D-6 and D-7 underground pump stations. The new generator building will be oriented in a north/south direction. It is a 20 ft. x 35 ft. building; will have a clay barrel tile roof; will be enhanced with a trellis or pergola all the way around the building;

will be enhanced by some benches and bougainvillea on lattice; and, will be detailed to make it more of a landscape element, with much of it screened by landscape material. Frank Maroney of Environment Design Group addressed the landscape issues. During construction, approximately 9 Royal Palms will be moved, cared for, and then later replaced in their original locations.

Commission Comments: Try to add plant material, perhaps grass, around the visible grates along the walkway; concern about the amount of water being discharged by D-7 with regard to boats nearby; proposed railing too utilitarian; try to vent exhaust pipe through roof.

MOTION BY MR. STRAWBRIDGE FOR APPROVAL AS PRESENTED WITH THE CONDITIONS THAT THE RAILING BE CHANGED TO SOMETHING MORE APPROPRIATE, PROBABLY PICKETS, AND THAT THE VENT EXHAUST BE STUDIED.

MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.

B - 002 - 2011 Renovation
Address: 168 Seaspray Avenue
Applicant: Mario and Susan Mercurio
Architect: Laberge & Menard Inc.
Project Description: Exterior and interior renovation of existing 2 story residence and garage/guest suite structure

Call for disclosure of ex parte communication : Several members made ex parte declarations.

Architects Daniel Menard and Mike Johnson provided this presentation. Mr. Menard explained that the new owners of the property want to retain the existing house, keep the massing of the house and garage, but embellish the architecture. In addition to interior changes, the proposal would change the roof, maintain the front door, articulate the roof line by raising the parapet, change the size and configuration of the windows, and enhance the chimneys. Similar changes are planned for the garage/apt. structure. A pair of gates will eliminate the view of the garage. Garage doors will be finished in pecky cypress and the existing railing will be changed to an ornamental railing. The building stucco will be painted beige; windows will be done in light green; terra cotta accents and copper rain water leaders are proposed.

Alan Stopek of Efflorescence presented the preliminary landscape plans. A courtyard setting will be created in the front with some type of focal element, perhaps a fountain or statue, and the pool/fountain will be placed in the rear.

Mr. Lindgren read an e-mail from the neighbor at 164 Seaspray, Joan Debie, wherein that neighbor expressed her concern regarding construction debris as it relates to her property.

MOTION BY MR. KARAKUL FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.

B - 003 - 2011 Demolition and new residence
Address: 269 Pendleton Avenue
Applicant: Mr. and Mrs. Kelly Moore
Architect: Smith Architectural Group, Inc.
Project Description: Demolition of existing structure and construction of new one/two story residence

Chairman Smith declared a Voting Conflict with regard to this project and passed the gavel to Mr. Strawbridge. Voting Conflict form on file. (Mr. Knowles voting)

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Don Kino with Smith Architectural Group presented this request. Mr. Kino provided a demolition report for this Volk designed home. He stated that the home is in fair to moderate condition, and is not meritorious in style. All perimeter landscaping will be retained.

MOTION BY MR. KARAKUL FOR APPROVAL OF THE DEMOLITION WITH THE TYPICAL CONDITIONS FOR DEMOLITION RELATING TO SODDING AND IRRIGATING.

MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.

Mr. Kino stated that the new house will serve as a guesthouse to the landmarked 277 Pendleton, also owned by the Moores. He explained that the design for the new house is deliberately understated to be subordinate to the main house. After reviewing the floor plans and elevations, Mr. Kino indicated that the house will have a white concrete tile roof, with white stucco and white impact windows, decorative black shutters, and raised panel garage doors.

Jorge Sanchez of Sanchez & Maddux Landscape Architects presented a preliminary landscape plan to make the front more street friendly. Two large Seagrapes serve to tunnel the service area. Two Date Palms will be relocated. Existing hedges on both sides will remain. A garden may be created in the front along with the elimination of any front parking, but no decisions have been made in this regard as yet. He reviewed the landscape material which is contemplated for use. Soda finished Herpel tile will be used in the design.

Commission comments: The second floor terrace will be dangerous for small children; likes the restraint used in the landscaping; the landscaping is somewhere between topiary and sculpture; an improvement over what is being demolished; and the whole package is quite successful.

MOTION BY MS. DIVER FOR APPROVAL AS SUBMITTED.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED 6-1, WITH MR. ZUKOV OPPOSED.

B - 004 -2011 Additions
ARCOM TO MAKE RECOMMENDATION RELATIVE TO VARIANCE(S)
Address: 751 Island Drive
Applicant: Richard and Patsy Johnson
Architect: Thomas Kirchhoff
Project Description: The extension of an existing family room and addition of loggias to the west elevation. The addition of an entry portico to the east elevation.

Variances: 1. Applicant is proposing to convert two patio awnings to permanent loggias, enlarge the family room, and convert the front entry awning into a permanent structure. The proposed additions will require a variance request to allow an increase in the lot coverage to 34.6% in lieu of the 27.3% existing and 30% maximum allowed in the R-B Zoning District; 2. A variance request to allow an existing boat lift to remain in the same location after the reconstruction of the seawall which is currently at 20 feet west of the U.S. Pierhead line and the Town's Bulkhead line in lieu of the 6 foot maximum allowed; 3. A variance request to allow a marginal dock to be 20 feet from the north property line in lieu of the 25 foot minimum required; and, 4. A variance request to allow a marginal dock to be 20 feet from the south property line in lieu of the 25 foot minimum required.

Call for disclosure of ex parte communication: None declared

Architect Tom Kirchhoff explained that the impetus for the project was a failing seawall. He presented this request for changes to this home since the long-time owners would like the home to accommodate large family gatherings. He reviewed the floor plans and elevations, explaining the requested changes. Mr. Kirchhoff noted that a much smaller pool is planned along with increased landscaping.

MOTION BY MR. KARAKUL THAT IMPLEMENTATION OF THE PROPOSED VARIANCE WILL NOT CAUSE NEGATIVE ARCHITECTURAL IMPACTS TO THE SUBJECT PROPERTY.

MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.

Commission Comments: Nice and tasteful, except for the large window facing West…three French doors would be preferable.

It was noted that though the building will be re-painted, the building colors will match existing.

MOTION BY MS. DIVER FOR APPROVAL AS PRESENTED, EXCEPT THAT THE THREE WINDOWS ON THE WEST ELEVATION SHOULD REMAIN.

MOTION SECONDED BY MRS. VANNECK.

Mr. Kirchhoff remarked that the client prefers the design as proposed.
MOTION FAILED 3-4, WITH MR. STRAWBRIDGE, MR. ZUKOV, MR. KARAKUL, AND MR. VILA OPPOSED.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. VILA.
MOTION CARRIED 4-3, WITH MR. SMITH, MS. DIVER AND MRS. VANNECK OPPOSED.

B - 005 - 2011 Existing equipment in setback
Address: 970 North Lake Way
Applicant: Domenica La. Falcione
Architect: The Lawrence Group
Project Description: Existing fully screened air-conditioned equipment in required setbacks

Call for disclosure of ex parte communication: None declared

Attorney James Brindell stated that this is an existing chilled water system on the North side of the property. Architect Eugene Lawrence indicated that the cooling tower is hedged on all four sides and is located in the Northeast corner of the property. The proposal will add a sound barrier behind the unit to reduce emitted noise.

Mr. Page reported that recently, the Building Department issued a permit to replace the cooling tower which had been in place for many years. Upon inspection, it was discovered that a variance was actually necessary for the unit in the same location. No objections have been received from any neighbors.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.

B - 006 - 2011 New Residence with final landscape/hardscape
Address: 255 Nightingale Trail
Applicant: Mr. Laurence Austin
Architect: Smith and Moore Architects, Inc./Daniel Kahan
Project Description: New one and two-story French Caribbean style residence with a pool. Final landscape and hardscape included in presentation. Roof material: Concrete shake style in cedar grey; Building: light grey with green tint; Trim: white; shutters: N/A

Call for disclosure of ex parte communication: Several members made ex parte communications.

Daniel Kahan of Smith and Moore Architects presented this project to create a home for a young family with a usable yard for children. The home has a central motor court and entry, a side loaded garage, a circular driveway, rolling gates (hidden in landscaping) used to quarter off part of the front motor court to create a secure area for children and dogs; and, future generator location on the Southeast corner of the property. The house has 4,500 sq. ft of air conditioned space and 5,400 total square footage. Mr. Kahan reviewed the site plan, floor plans and elevations. Windows will be white aluminum clad wood impact resistant windows. The front door will be painted wood with sidelites and transom.

Keith Williams of Mario Nievera Design Inc. presented the landscape and hardscape. The driveway, with two entrances, will be done in acid washed cast stone bordering tabby concrete. He reviewed the proposed plant materials, perimeter screening, and terraces. The proposal includes a long lap pool, 60 ft. long by 10 ft. wide, with spa on the west side of the pool. Another water feature is being contemplated, but that will have to return to the commission at a later date.

Commission Comments: Problem with big rolling aluminum gates across the front of the house; there is insufficient space to get cars in and out of the garage; the driveway/garage configuration does not serve to achieve the goal of the Town to place cars in the garage; concern about jamb at front door; west elevation – door at outdoor shower…have an independent roof over that; too many different size windows and doors; concern about pool safety; good project.

MOTION BY MR. KARAKUL FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. VILA.
MOTION CARRIED UNANIMOUSLY.

C. **MINOR PROJECTS - OLD BUSINESS** **(11:51:12 a.m.)**

A - 010 - 2010 Roof Change
Address: 410 North Lake Way
Applicant: Bray Childrens Trust
Architect: MP Design & Architecture, Inc.
Project Description: Change existing roof material from asphalt shingle to standing seam metal. Change existing covered loggia roof to open pergola.

At the December meeting, after hearing this project, there was a motion to defer the project and urge the applicant to consider wood shake as a roof material.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Michael Perry stated that he had taken the commission's comments back to his client, but the property owner remains firm in the desire for a standing seam roof in the grey, aluminum color (16.5" from seam to seam). He presented various photos of other Palm Beach homes which have this type of roof. Mr. Perry also presented a sample of a second choice material, a metal shingle roof.

Commission Comments: There are quite a few roofs like this in the Town; this style roof is acceptable on this type of house; would not want to see an abundance of this type of roof in the Town; the only part of this house that is seen by the public is the roof; the house has a Key West feel….why not a Key West roof?; not in favor of standing seam roofs.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. VILA.
MOTION FAILED 3-4, WITH MS. DIVER, MR. KARAKUL, MRS. VANNECK, AND MR. SMITH OPPOSED.

MOTION BY MR. STRAWBRIDGE FOR DEFERRAL.
MOTION DIED FOR LACK OF A SECOND.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. VILA.
MOTION CARRIED 4-3, WITH MS. DIVER, MRS. VANNECK AND MR. SMITH OPPOSED.

D. **MINOR PROJECTS - NEW BUSINESS**

A - 001 - 2011 Exterior modifications
Address: 396 Royal Palm Way
Applicant: Keith Spina, Glidden Spina & Partners
Architect: Keith Spina
Project Description: Remove the existing painted aluminum entry door and arched top transom window and replace with a code compliant painted aluminum entry door and transom window, including a required structural support beam which will be stucco faced to match the adjacent existing stucco; and, reconfigure the stucco faced site planter walls at the north entrance, including the addition of decorative stucco faced pilasters.

Call for disclosure of ex parte communication: None declared

Keith Spina of Glidden Spina & Partners presented this request. First, he informed the commission that the site wall portion of the application, as stated above, is removed from consideration today. That aspect of the application will be heard at a future date.

For today's purposes the front door is the focus. Mr. Spina presented a painted wood door with lites and transoms above.

Commission comments: Simplify the front door and re-work it; this is an opportunity to make the front door better; simplify the quoins around the doors; front door is too high; an improvement over what is there; this is not an improvement…so disconnected; let the existing doors remain until you figure out something better.

MOTION BY MR. VILA FOR DEFERRAL FOR FURTHER STUDY.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.

E. **MAJOR PROJECTS - PROJECTS REMANDED TO ARCOM BY TOWN COUNCIL (12:12:33 a.m.)**

B - 070 - 2010 Exterior Modifications
Address: 150 Worth Avenue
Architect: Jerome Baumoehl, AIA, NCARB
Project Description: Reconsideration of signage and architectural changes to accommodate signage

Call for disclosure of ex parte communication : All members made ex parte declarations.

Mr. Page reported that after ARCOM took action at the December meeting, the project was then reviewed by the Town Council for variance and Special Exception. The Town Council remanded the project back to ARCOM in the hope of finding an acceptable solution.

Jerome Baumoehl returned today with several design options for the signage. Several of the stores signs will be placed within the existing stucco bands, requiring no architectural modification, using pin-mounted, black, matte finish letters, 9: to 10" tall. For the stores that have architectural elements and signage is being added: Vilebrequin, Christofle, and Pucci and Louis Vuitton, three design options were presented.

For Vilebrequin, Christofle, and Pucci: Option 1: 10" black matte pin mounted letters mounted at the keystone on the existing arch; Option 2: Black metal frames placed below the architecture using silver lettering; and, Option 3: Black iron frame with stone panel insert and 10" matte black pin mounted letters.

For Louis Vuitton, Option1: Black iron frame with spokes/circle design and beam with silver lettering; Option 2: Beam, with silver lettering, across the arch sitting on top of the capitals of the archway; and Option 3: Beam , with silver lettering, and black spokes.

Members discussed this issue at some length. Though some of the members still believed that none of this signage is necessary, Chairman Smith stated that the Town Council has asked ARCOM to reconsider the matter. He added that contrary to last month, when the architecture of the building was affected, some reasonable solutions have been presented today which do not change the architecture, except in the case of Louis Vuitton.

Mr. Page reminded the commission that the Town Council wants an opinion from ARCOM relative to the variances required.

MOTION BY MRS. VANNECK RELUCTANTLY, THOUGH WE ARE NOT IN FAVOR OF ADDITIONAL SIGNAGE ON THIS BUILDING, A

RECOMMENDATION FOR OPTION #1 FOR PUCCI, CHRISTOFLE AND VILEBREQUIN, AND OPTION #2 FOR LOUIS VUITTON, AND THAT THE IMPLEMENTATION OF THE PROPOSED VARIANCE WILL NOT CAUSE NEGATIVE ARCHITECTURAL IMPACTS TO THE SUBJECT PROPERTY.

MOTION SECONDED BY MR. VILA.
MOTION CARRIE 6-1, WITH MR. ZUKOV OPPOSED.

Let the record show that at this point, 12:47 p.m., there was a short recess.

B - 06 - 2010 ARCOM consideration/comments regarding Mediation Report's revised plans
Address: 1100 North Ocean Boulevard
Applicant: 1100 North Ocean Boulevard Trust
Architect: The Lawrence Group Architects

Prior to hearing from either side in this matter, Town Attorney Randolph gave a lengthy explanation of why and how this matter was once again before ARCOM. In short, a mediation took place, with Mr. Randolph, Mr. Rosow and Mr. Smith participating in that process. After reviewing alternative proposals by both parties, both Mr. Rosow and Mr. Smith agreed to take the Karp's (1100 North Ocean Boulevard) alternative plan back to the Town Council, and the Town Council, in turn, approved the mediation report and remanded the matter back to ARCOM for further consideration. At the Town Council's February meeting, the Council will make a final determination regarding this matter.

Call for disclosure of ex parte communication: Mr. Smith made an ex parte declaration.

Chairman Smith stated that each side will be given 15 minutes for their respective presentations, after which the members will go into executive session.

Attorney James Brindell, Architect Eugene Lawrence, and Landscape Architect Jeff Blakely presented a new design alternative designed completely within the zoning code. In an effort to address the issue of too much mass, the revised design eliminates the second floor over the parking garage and extends the first floor to the south. Mr. Lawrence reviewed the elevations as revised, and Mr. Blakely did likewise with respect to the landscaping. Mr. Lawrence felt the new design successfully decreases the mass and the square footage within the building. He noted that the addition, as revised, is not more seaward than in previous designs.

Attorney Paul Rampell, representing the Castles at 1095 North Ocean Boulevard, placed into the record a disc of all records from previous meetings. He called attention to the fact that the Castles and their neighbors continue to object to the proposal. Architect Thomas Kirchhoff testified to the new Karp proposal. He felt that the new design takes a step backwards, and fails in every criterion which he evaluated; that the new guesthouse lacks any positive relationship with the house; that the interior circulation is problematic; that there is lots of wasted space; and,

that the concept has a commercial quality. He added that the plans are incomplete for proper review by ARCOM. Mr. Kirchhoff presented a Photoshop image of what the Castles would see when looking north if the Karp proposal is built. Mr. Kirchhoff presented three different alternate locations (A, B & C) where the Karp's addition might be built.

Mr. Rampell focused upon the 15 feet between the properties; the sustainability of plant material within that 15 feet; 300 petitions from Town residents who oppose the Karp plans and seek the preservation of open space; the testimony of former ARCOM members who served in 1996, when the house was built; the positioning of the Karp house upon its lot; and the belief that the original spacing between the houses should be maintained.

Commission Comments – Executive Session

Questioned the accuracy of the Photoshop images presented; questioned whether placing the addition at the North end of the property, as proposed by the Castles, is feasible; the Karp's revised proposal is a huge improvement from the previous presentation, even though some additional improvements may be needed; why would anyone attempt to squeeze this addition into a space (North end) where there is no room?; the one story design is an improvement, but on the south side, it looks like a ranch house that rambled on… make it more appropriate; there is still an awkward connection from the loggia to the guest wing; the east elevation, as proposed, has a piece that hangs off at the end nearest the Castles…this could be made smaller; not comfortable approving a home that duplicates the details of a main house that we would not approve today; the reduction in mass is a big improvement and a positive change…the 1996 architecture is what it is…the addition matches the main house…landscaping is very important to the Castles; they were asked to blend the addition into the main house and they did; this is an improvement, but is there another solution….is there a better place to build what they are entitled to build?; we are not the designers of this project…we can only comment on whether this proposal is appropriate or not; have we exhausted all options to preserve sensitivity to open space; the house was originally skewed to the north because of a tennis court which is no longer there; are we not creating a precedent to say that a 15 ft. separation is not enough?; I believe in property rights…the Karps are not asking for variances…the massing is not overwhelming…it's a good compromise by the Karps since they could have built two stories by code…it goes with the house…it respects the neighbor… minor tweaks are needed, but I could recommend to the Town Council that they should consider this; and, (later in the meeting), there are other options which would be more friendly to the neighbors.

MOTION BY MR. ZUKOV TO FAVORABLY RECOMMEND APPROVAL OF THIS PLAN TO THE TOWN COUNCIL.

MOTION SECONDED BY MR. SMITH (PASSED GAVEL TO STRAWBRIDGE.)

UPON MR. VILA'S SUGGESTION, MOTION AMENDED BY MR. ZUKOV TO ADD THE REQUIREMENT THAT THE APPLICANT RETURNS TO ARCOM WITH ADDITIONAL LANDSCAPE PLANNING.

MOTION SECONDED BY MR. VILA. (MR. SMITH TAKES GAVEL BACK.)

MOTION FAILED 3-4, WITH MR. STRAWBRIDGE, MS. DIVER, MR. KARAKUL AND MRS. VANNECK OPPOSED.

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MOTION BY MS. DIVER THAT THE APPLICANT COME BACK TO PROPOSE A DIFFERENT LOCATION FOR THE ADDITION AND SHOW US THE POSSIBILITIES FOR A DIFFERENT LOCATION ON THE SITE FOR THE ADDITION.

MOTION DIED FOR LACK OF A SECOND.

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MOTION BY MR. KARAKUL THAT ARCOM DOES NOT STRONGLY RECOMMEND THIS AS THE BEST ALTERNATIVE FOR THE TOWN COUNCIL.

MOTION SECONDED BY MS. DIVER.
MOTION CARRIED 4-3, WITH MR. ZUKOV, MR. VILA, AND MR. SMITH OPPOSED.

Mrs. Vanneck clarified that her objection was on the basis of architecture as drawn as she felt it could be approved.

IX. COMMUNICATIONS FROM CITIZENS (3 MINUTE LIMIT PLEASE)

X. COMMENTS OF THE ARCHITECTURAL COMMISSION AND DIRECTOR OF PLANNING, ZONING AND BUILDING DEPARTMENT: (1:34:38 a.m.)

Staff update relative to November 2011 ARCOM meeting: Mr. Page reported that there is a meeting date conflict for the month of November because of a previously scheduled meeting for November 18th by another board/commission. After review of this issue, ARCOM will be able to continue to meet on Friday, November 18, 2011, but will have to conclude its meeting by approximately 1:15 p.m. to 1:30 p.m. so that the Chambers will be available for another meeting at 2:00 p.m.

Ordinance #35-10: Mr. Page discussed the recently passed ordinance addressing member absences from the Architectural Commission meetings. Absences are excused for illness, a death in the family, religious holidays and requirements of legal process. Mr. Page specifically referenced the following new language: *"The member shall notify the Director of Planning, Zoning & Building in writing of the board member's intended*

absence at least seven (7) business days prior to the regularly scheduled meeting. Failure to do so, absent an emergency which prevents timely notice, will cause the absence to be unexcused."

Items for Commission Feedback:

Requirement for at least two architects, who are licensed in the State of Florida, to serve on ARCOM: Mr. Page asked the members how important it is that the architects be licensed in the State of Florida. While some members felt that Florida licensure was very important, others did not. After discussion, in a show of hands five (5) of the members agreed that Florida licensure should be required.

Major/Minor Projects and Staff Approvals: Veronica Close, Assistant Director of Planning, Zoning & Building, distributed some sample language, which has never been codified, relative to the separation and definition of Major and Minor Projects, and relative to the practice of staff approvals for those issues which are so minor in nature that it is staff's opinion that they do not have to appear on an ARCOM agenda.

Let the record show that Ms. Diver left the meeting at 2:04 p.m.
Let the record show that Mr. Zukov left the meeting at 2:08 p.m.
Let the record show that Mr. Strawbridge left the meeting at 2:12 p.m.

The members expressed some reservation about an overabundance of staff approvals being granted. Mr. Lindgren explained his rationale for giving staff approvals and/or for forwarding projects to ARCOM for review. After discussion, members agreed to continue with the current standing practice of allowing staff approvals according to the guidelines expressed by Mr. Lindgren. Ms. Close clarified with the commission that they had no problem to a reference, within the code, to administrative or staff approvals. She added that staff will return to the commission in the future with a listing of the types of improvements which may be suitable for staff approval. One of the members cautioned, however, that the listing should be more broad, rather than specific, in order for staff to be able to work with it.

XI. ADJOURNMENT:

MOTION BY MRS. VANNECK TO ADJOURN AT 2:13 P.M.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.

The next meeting of the Architectural Commission will be held on February 23, 2011 at 9:30 a.m. in the Town Council Chambers, 2nd floor, Town Hall, 360 South County Road, Palm Beach.

Respectfully submitted,

Jeffery W. Smith, Chairman
ARCHITECTURAL COMMISSION

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TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 5-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Approving A Three Year Enterprise License Agreement With ESRI In The Amount Of $25,495 Per Year Which Will Provide The Town With Unlimited License Use And Support Of ESRI Enterprise Software And Authorizing The Town Manager To Execute This Purchase On Behalf Of The Town.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated January 25, 2011, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 5-11
- Contract
- Sole Source Document

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

Via: Thomas G. Bradford, Deputy Town Manager

From: Spencer D. Wilson, Information Systems Manager

Re: Approval of a Three Year Enterprise License Agreement with ESRI Inc. for Unlimited Software Licenses and Support of their GIS Suite of Software
Resolution No. 5-11

Date: January 25, 2011

STAFF RECOMMENDATION

The Office of Information Systems is recommending entering into a three year Enterprise License Agreement to purchase an unlimited software license and support from ESRI. This agreement will cover all of the Town's usage and maintenance of ESRI software products for the next three years. The cost for this period of time is locked in and will be $25,495.00 per year. Staff is recommending the adoption of Resolution No. 5-11 which provides the Town Manager the authority to sign the requisitions and expend the funds from the annual budget for these purchases.

GENERAL INFORMATION

The Town currently uses ESRI software licenses within all Town Departments to access, edit and store all of the Town's Geographical data. The GIS system is the backbone for the majority of the Town's data and is used to store, organize, and manipulate the data so the information can be easily obtained from a graphical view. The ESRI software is the main tool to perform all of these functions and the ability to use this software anywhere in Town with no restrictions allows for this data to be accessible to all users. Three years ago, per Resolution No. 15-08, the Town purchased the ESRI licenses and support under this same contract and for the same amount. This contract will provide the Town with the same level of support and unlimited access to all of the ESRI software for the next three years at the cost of $25,495.00 per year. If these products were purchased individually and not under this contract, the estimated three year cost would be over $92,000 in software, support, and maintenance and the Town would be limited as to the number of software licenses available.

ESRI is offering small municipalities and counties the ability to enter into this enterprise license agreement in order to promote the GIS systems software without restricting the clients. The

ability to have unlimited license usage along with support for a flat fee will allow the Town to continue to expand the use of the Town's GIS system without additional costs. This is a great opportunity to have access to the software and support that the Town needs from ESRI as well as fixing the Town's costs for the next three years. All of the software products included in this agreement are proprietary to ESRI and are considered sole source.

PURCHASING REVIEW

ESRI's software is the industry standard and the only software that can provide the Town the functions needed to store and access our data geographically. ESRI is owner of this software and it can only be purchased from ESRI directly. This procurement has been reviewed and approved by the Purchasing Division of the Finance Department and award is hereby recommended to ESRI as a sole source per attached documentation.

TOWN ATTORNEY REVIEW

The agreement with ESRI and the resolution have been approved by the Town Attorney for legal form and sufficiency.

FUNDING/FISCAL IMPACT

This purchase will come from the Information Systems Software Support account and is included in the FY2011 budget. The total cost for FY11 will be $25,495.00.

RESOLUTION NO. 5-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A THREE YEAR ENTERPRISE LICENSE AGREEMENT WITH ESRI IN THE AMOUNT OF $25,495 PER YEAR WHICH WILL PROVIDE THE TOWN WITH UNLIMITED LICENSE USE AND SUPPORT OF ESRI ENTERPRISE SOFTWARE AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THIS PURCHASE ON BEHALF OF THE TOWN.

WHEREAS, staff has recommended the approval of a three year Enterprise License Agreement with ESRI for unlimited license use and support for ESRI enterprise software in the amount of $25,495.00 per year and authorizing the Town Manager to execute the agreement and purchase directly with ESRI.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1: The foregoing recitals are hereby ratified and confirmed.

Section 2: The three year Enterprise License Agreement for the unlimited use and support of the ESRI software in the amount of $25,495.00 per year attached hereto as Exhibit "A" and incorporated by reference as a part of this resolution is hereby approved and the Town Manager is authorized to execute this purchase on behalf of the Town.

PASSED AND ADOPTED IN REGULAR, ADJOURNED SESSION OF THE TOWN COUNCILOF THE TOWN OF PALM BEACH ASSEMBLED THIS 15th DAY OF February 2011.

_____
Gail Coniglio, Mayor

_____
, Council President

_____
, President, Pro Tem

_____
, Council Member

_____
, Council Member

ATTEST:

_____
, Council Member

_____
Cheryl Somers, Acting Town Clerk

Exhibit A

August 10, 2010

Ms. Coraliz Cordero Kroll
TOWN OF PALM BEACH
360 S COUNTY RD
PALM BEACH, FL 33480

Dear Cory,

The ESRI Small Municipal and County Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to ESRI® software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on ESRI's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement. An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all ESRI software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.

- If your organization wishes to acquire and/or maintain any ESRI software during the term of the agreement that is not included in the ELA, it may do so separately at the ESRI pricing that is generally available for your organization for software and maintenance.

- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.

- The organization will establish a Tier 1 support center to field calls from internal users of ESRI software. The organization may designate individuals as specified in the ELA who may directly contact ESRI for Tier 2 technical support.

- The organization will provide an annual report of installed ESRI software to ESRI.

ESRI 380 New York St., Redlands, CA 92373-8100, USA • TEL 909-793-2853 • FAX 909-793-5953 info@esri.com • WEB www.esri.com

- ESRI software and updates that you are licensed to use will be shipped automatically as they become available.

- The organization will act as an ESRI reference site and will permit ESRI to publicize its use of ESRI software and services.

- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** and have it signed by an authorized representative of the organization.

2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title if applicable, address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address noted below:

   ESRI
   Attn.: Customer Service SG-ELA
   380 New York Street
   Redlands, CA 92373-8100

   Or e-mail service@esri.com or fax documents to 909-307-3083.

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best regards,

Robyn Peverill
704-541-9810 *8640
rpeverill@esri.com

Quotation # 20371315

Date: August 10, 2010

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
3325 Springbank Ln, Ste 200
Charlotte, NC 28226-3343
Phone: (704) 541-9810 Fax: (704) 541-7620
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 08/10/2010 To: 02/06/2011

Customer # 184972 Contract #

TOWN OF PALM BEACH
INFORMATION SYSTEMS
360 S COUNTY RD
PALM BEACH, FL 33480

ATTENTION: Coraliz Cordero Kroll
PHONE: (561) 227-6313
FAX: 561-835-4691

Material	Qty	Description	Unit Price	Total
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement - year 1 payment	24,995.00	24,995.00
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement - year 2 payment	24,995.00	24,995.00
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement - year 3 payment	24,995.00	24,995.00

Item Total:	74,985.00
Subtotal:	74,985.00
Sales Tax:	0.00
Estimated Shipping & Handling(2 Day Delivery) :	0.00
Contract Pricing Adjust:	0.00
Total:	$74,985.00

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether ESRI is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Robyn Peverill **Email:** rpeverill@esri.com **Phone:** (704) 541-9810 x8640

Acceptance of this quotation is limited to the ESRI License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: ESRI, File No. 54630, Los Angeles, Ca 90074-4630

PEVERILLR **This offer is limited to the terms and conditions incorporated and attached herein.**

SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT (E214-1 05/14/2010)

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and Environmental Systems Research Institute, Inc. ("ESRI"), with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of ESRI's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific ESRI Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions
ArcInfo
ArcEditor
ArcView
ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for ArcGIS (JTX)

Server Software and Extensions
ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)
ArcIMS
ArcGIS Server Extensions: 3D, Schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

Developer
ArcGIS Engine Runtime
ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities
One Annual Subscription to ESRI Developer Network (EDN)

OTHER BENEFITS

Number of ESRI International User Conference Registrations provided annually	**2**
Number of Tier 1 Help Desk Individuals authorized to call ESRI	**2**
Sets of media*	**2**
Virtual Campus Dollars allowance for ESRI authored courses only	**5,000**
Five percent (5%) discount on all commercially available instructor-led training at ESRI facilities	

* Additional sets of media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: ESRI Customer Service, Dept. SG-ELA, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

_____
(Licensee)

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

Licensee Contact Information

Contact Name: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

ELA Quotation Number: _____

ESRI Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI to Licensee for the Enterprise Software.
- "ELA Quotation" means the ESRI quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by ESRI under this ELA.
- "Software" means the actual copy of all or any portion of ESRI's proprietary software technology accessed or downloaded from an authorized ESRI Web site or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Software is licensed and not sold. ESRI and its licensors own the Enterprise Software and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. ESRI and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms and conditions of this ELA, ESRI grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
b. Deploy one subscription of the ESRI Developer Network for use by a single named developer for the term of this ELA.
c. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
d. Use Enterprise Software in accordance with Exhibit 1 (provided that all licenses are Term Licenses).

3.2 Consultant Access. Subject to 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely using/accessing Enterprise Software from a third party's computers or machines under contract to the Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s): "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [*Insert the actual copyright date(s) from the source materials*] ESRI and its licensor(s). All rights reserved."

4.2 Uses Not Permitted

a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
g. Licensee shall not remove or obscure any ESRI or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
i. Hard-copy Documentation may not be copied.
j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

5.1 Term. The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual term license grants are provided with this ELA.

5.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

5.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to ESRI. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided for in this Article 6, ESRI warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

6.2 Data and Web Services Disclaimer. The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

6.3 Special Disclaimer. SAMPLES, PATCHES, AND HOT FIXES ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

6.4 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

6.5 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.6 Exclusive Remedy. Licensee's exclusive remedy and ESRI's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at ESRI's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for the Software subject to the ESRI Maintenance Program found at www.esri.com/legal/maintenance.html; or (iii) return of the license fees paid by Licensee for the Software or Documentation that does not meet ESRI's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or Documentation and executes and delivers evidence of such actions to ESRI.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

7.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 ESRI shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. patent, copyright, or trademark provided

a. Licensee promptly notifies ESRI in writing of the claim;
b. Licensee provides documents clearly describing the allegations of infringement;
c. ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
d. Licensee cooperates fully in the defense of the claim.

8.2 If the Software is found to infringe a U.S. patent, copyright, or trademark, ESRI, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to ESRI, the license shall terminate, and Licensee shall uninstall the infringing items. ESRI's entire liability shall then be to indemnify Licensee pursuant to section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 ESRI shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the Software by (i) the combination of or integration with a product, process, or system not supplied by ESRI; (ii) material alteration by anyone other than ESRI or contractors acting on behalf of ESRI; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by ESRI under section 8.2.

8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples delivered hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI AND ITS DISTRIBUTOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. ESRI may provide notice of the revisions to Licensee in writing or by posting them on ESRI's Web site at www.esri.com/legal. The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, in whole or in part, to (i) any U.S. embargoed country (or to a national or resident of any U.S. embargoed country); (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport violates any U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to U.S. export laws as they may occur from time to time.

9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. ESRI will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without ESRI's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall

have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable ESRI U.S. Software Maintenance Program document (found at www.esri.com/legal) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

   (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
   (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
   (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
   (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
   (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact ESRI Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
   (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact ESRI directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by ESRI

   (1) ESRI shall log the calls received from Tier 1 Help Desk individuals.
   (2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
   (3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
   (4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
   (5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee user.

ESRI may, at ESRI's sole discretion, make patches, hot fixes, or updates available for downloading from ESRI's Web site or deliver them on media.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. ESRI's Federal ID Number is 95-2775-732.
b. Upon receipt of the initial Purchase Order from Licensee, ESRI shall deliver media containing the Enterprise Software to Licensee for its Deployment activities. ESRI shall ship the media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid.
c. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
b. The following information shall be included in each Purchase Order:

   (1) Licensee name; ESRI customer number, if known; and bill-to and ship-to addresses
   (2) Purchase Order number
   (3) Applicable annual payment due
   (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of ESRI by Licensee. Licensee agrees that upon execution of the ELA, ESRI may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 OEM Licenses. If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of ESRI, Licensee shall not be entitled to or seek any discount from the OEM business partner or ESRI, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. ESRI's Product Life Cycle Support Policy, available at http://resources.arcgis.com/content/product-life-cycles,

defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle Support Status, which can be found at http://resources.arcgis.com/content/product-life-cycles.

13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

ARTICLE 14—OPTIONAL ITEMS

If additional Software identified in the ELA Quotation is acquired, it will be deemed added to the Enterprise Software Schedule and subject to the terms of this ELA. If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.

EXHIBIT 1
SCOPE OF USE
(E300 05/14/2010)

The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iPhone (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iPhone (1, 20, 25, and 33)
- ArcGIS Mapping
  - For Excel (5, 6, 33, and 35)
  - For SharePoint (5, 6, 31, 33, 35, and 47)
- ArcGIS Mobile Deployments (1, 15, 16, 25, and 33)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45)
- ArcGIS Server Extensions
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping APIs (including JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (either 1 or 2 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- ESRI Aeronautical Solution (either 1 or 2)
- ESRI Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- ESRI Business Analyst Server (either 3, 4, or 5 and 8, 9, 21, 25, 28, 31, 33, 39, 40, 45, and 48)
- ESRI Business Analyst Server Developer (6, 25, 33, 35, and 51)
- ESRI Defense Mapping (either 1 or 2)
- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- ESRI Nautical Solution (either 1 or 2)
- ESRI Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)

Data

- Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- ArcGIS Data Appliance (6, 23, 25, and 41)
- ESRI Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- ESRI Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer as long as only one (1) copy of the Software, Data, and Documentation is in use at any one (1) time. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
2. "Concurrent Use License." Licensee may install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
3. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Staging Server License." In addition to the Development Server License rights, Licensee may use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
5. "Deployment Server License." In addition to the Staging Server License rights, Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
6. License is provided only as a Term License. "Term License" means license provided for use in a limited time period or on a subscription or transaction basis.
7. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs.
8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee installs the Spatial Data Service.
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. U.S. Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects ESRI's rights in its Software, Data, Web Services, and Documentation to the same extent as the ESRI License Agreement including, but not limited to, the following terms:

    a. Sublicensee may not reverse engineer, decompile, or disassemble the ESRI Software, Data, Web Services, or Documentation, except to the extent permitted by applicable law; copy for commercial use; transfer; or assign its rights under the license grant;
    b. Sublicensee may not use any ESRI Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
    c. Third-party dependent or required components are redistributable subject to permission from the owner or author.

17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic ESRI-certificated files when used over the Internet. Licensee shall not use ESRI certification or reference ESRI as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class ESRI-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the ESRI License Agreement, and the recipient agrees to be bound by the terms and conditions of the

license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.

21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.
22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at http://www.esri.com/legal/, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at http://www.esri.com/legal/ for the specific Data accessed. The Use of Data Restrictions may be modified by ESRI from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to ESRI, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to four (4) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from Web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of four (4) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of ArcGIS Online Services or Microsoft Bing Maps are conditioned upon Licensee's acceptance of the ESRI Web Site and Service Terms of Use Agreement and the terms and conditions specific to ArcGIS Online Services or Microsoft Bing Maps found at http://www.esri.com/legal/.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Reserved.
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with ESRI Business Analyst and ESRI Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee has also installed the Microsoft SharePoint Server.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the ESRI reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of ESRI. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. ESRI MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each ESRI MapIt server license.
51. ESRI Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of ESRI. Licensee shall treat any source code file identified as "Software" in a README file or at http://www.esri.com/legal/ as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:

    a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com or example.com.xx (where xx is a registered country code), *example* is the principal registered unique domain identifier.
    b. A license for desktop applications is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

EXHIBIT 2
TRAINING ADDENDUM
(E207CWM 9/09)

ARTICLE 1—TRAINING DESCRIPTION

ESRI offers instructor-led training related to the use of its proprietary GIS software. ESRI will provide to Licensee a fixed number of days of Instructor-Led Training, as defined in the Small Enterprise Training Package included in the ELA. Instructor-led training events occur at an ESRI Learning Center or via the Web. The ESRI software training course(s) to be conducted, location, and schedule dates are set forth in the *ESRI Course Catalog* located on ESRI's Training Web site (http://training.esri.com). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training Web site. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual where applicable.
- ESRI will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of ESRI's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Licensee must not resell seat(s) to an ESRI training class unless explicitly authorized in writing by ESRI.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on ESRI's Training Web site.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- U.S. government export control laws and regulations prohibit U.S. persons from engaging in transactions with certain denied persons found on various U.S. Government Denied Persons lists (e.g., U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training class. Licensee must submit the list of Student names to ESRI at least three (3) business days before the class start date. Any Student that is found on any of the various U.S. Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to U.S. government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to ESRI's Customer Service of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for ESRI training as found at http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

Licensee may cancel or reschedule Student attendance in training up to three (3) working days before the scheduled class start date. In the event of a cancellation, Licensee will reimburse ESRI for any reasonable travel and shipping expenses incurred by ESRI. In the event Licensee does not notify ESRI at least three (3) days prior to the scheduled training date, ESRI will deduct the appropriate number of class days from the remaining account training days.

If ESRI is unable to conduct the training on the scheduled date, ESRI will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

Students may transfer from one scheduled ESRI Learning Center class to another up to two (2) times at no additional charge. Subsequent transfers may be assessed an additional nonrefundable transfer fee.

Student substitutions, when a Student's place in class is filled by another person from the same organization, are allowed provided that ESRI Customer Service is notified three (3) business days in advance of the class start date.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- The training days are available for a period of thirty-six (36) months, commencing on the Effective Date, or when all training days are consumed, whichever is sooner.
- Licensee is committed to scheduled training days when ESRI training requests are received and accepted by ESRI.
- ESRI will invoice for outstanding training expenses where applicable.
- Upon the anniversary, unused training days are forfeited.
- Training days are nontransferable and nonrefundable for any other ESRI products or services.

ARTICLE 6—CONFIDENTIAL INFORMATION

ESRI or the Licensee may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

ARTICLE 7—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, ESRI and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 8—WARRANTY

ESRI will provide training in a manner consistent with the technical and professional standards of the industry.

8.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 9—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 10—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

August 10, 2010

Ms. Coraliz Cordero Kroll
TOWN OF PALM BEACH
360 S COUNTY RD
PALM BEACH, FL 33480

Dear Cory:

ESRI is happy to announce that our Small Municipal and County Government Enterprise License Agreement (ELA) program offers the option to add unlimited access to ArcPad® and Data Interoperability® via add-on options.

These offers are available to customers who have entered into an ESRI® Small Municipal and County Government Enterprise License Agreement and include the benefits that you found attractive in that ELA program. You may purchase the ArcPad and Data Interoperability add-ons individually or together.

The additional software/services will be licensed under the terms and conditions of your existing ELA. The license term of the add-on(s) will coincide with your current ELA term and expire on the same date.

If you would like to purchase the ArcPad and/or Data Interoperability add-on option(s), please submit an order request using the procedures identified below. This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

Follow these steps to expedite your purchase of the ArcPad and/or Data Interoperability add-on(s) to your existing ELA:

1. Prepare a purchase order including the sentence "**This purchase order is governed by the terms and conditions of the ESRI Small Municipal and County Government ELA, and any different or additional terms and conditions in or with this purchase order shall not apply.**" Have it signed by an authorized representative of the organization.

2. Reference the ELA Quotation number on your purchase order. Also, reference the option(s) which you are purchasing.

3. In the purchase order, identify the Ship to and Bill to information for your organization.

4. Send your purchase order, along with a copy of this offer document, to the address noted below for processing:

ESRI 380 New York St., Redlands, CA 92373-8100, USA • TEL 909-793-2853 • FAX 909-793-5953 info@esri.com • WEB www.esri.com

ESRI
Attn.: Customer Service SG-ELA
380 New York Street
Redlands, CA 92373-8100

Or, e-mail service@esri.com or fax documents to 909-307-3083.

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best regards,

Robyn Peverill
704-541-9810 *8640
rpeverill@esri.com

Quotation # 20371316

Date: August 10, 2010

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
3325 Springbank Ln, Ste 200
Charlotte, NC 28226-3343
Phone: (704) 541-9810 Fax: (704) 541-7620
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 08/10/2010 To: 02/06/2011

Customer # 184972 Contract #

TOWN OF PALM BEACH
INFORMATION SYSTEMS
360 S COUNTY RD
PALM BEACH, FL 33480

ATTENTION: Coraliz Cordero Kroll
PHONE: (561) 227-6313
FAX: 561-835-4691

Material	Qty	Description	Unit Price	Total
115571	1	ArcPad Populations of 0 to 25,000 Small Government Enterprise License Agreement - year 1 payment	500.00	500.00
115571	1	ArcPad Populations of 0 to 25,000 Small Government Enterprise License Agreement - year 2 payment	500.00	500.00
115571	1	ArcPad Populations of 0 to 25,000 Small Government Enterprise License Agreement - year 3 payment	500.00	500.00
118030	1	ArcPad 10.0 Backup Media (Includes StreetMap Premium North America and Europe Da	0.00	0.00

Item Total:	1,500.00
Subtotal:	1,500.00
Sales Tax:	0.00
Estimated Shipping & Handling(2 Day Delivery) :	19.95
Contract Pricing Adjust:	0.00
Total:	$1,519.95

The ArcPad ELA is sold in conjunction with the SGELA. The term dates for the ArcPad ELA need to follow the SGELA term dates.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether ESRI is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Robyn Peverill **Email:** rpeverill@esri.com **Phone:** (704) 541-9810 x8640

Acceptance of this quotation is limited to the ESRI License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: ESRI, File No. 54630, Los Angeles, Ca 90074-4630

PEVERILLR **This offer is limited to the terms and conditions incorporated and attached herein.**

SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT (E214-1 05/14/2010)

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and Environmental Systems Research Institute, Inc. ("ESRI"), with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of ESRI's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific ESRI Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions
ArcInfo
ArcEditor
ArcView
ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for ArcGIS (JTX)

Server Software and Extensions
ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)
ArcIMS
ArcGIS Server Extensions: 3D, Schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

Developer
ArcGIS Engine Runtime
ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities
One Annual Subscription to ESRI Developer Network (EDN)

OTHER BENEFITS

Number of ESRI International User Conference Registrations provided annually	**2**
Number of Tier 1 Help Desk Individuals authorized to call ESRI	**2**
Sets of media*	**2**
Virtual Campus Dollars allowance for ESRI authored courses only	**5,000**
Five percent (5%) discount on all commercially available instructor-led training at ESRI facilities	

* Additional sets of media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: ESRI Customer Service, Dept. SG-ELA, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

_____
(Licensee)

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

Licensee Contact Information

Contact Name: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

ELA Quotation Number: _____

ESRI Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI to Licensee for the Enterprise Software.
- "ELA Quotation" means the ESRI quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by ESRI under this ELA.
- "Software" means the actual copy of all or any portion of ESRI's proprietary software technology accessed or downloaded from an authorized ESRI Web site or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Software is licensed and not sold. ESRI and its licensors own the Enterprise Software and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. ESRI and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms and conditions of this ELA, ESRI grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
b. Deploy one subscription of the ESRI Developer Network for use by a single named developer for the term of this ELA.
c. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
d. Use Enterprise Software in accordance with Exhibit 1 (provided that all licenses are Term Licenses).

3.2 Consultant Access. Subject to 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely using/accessing Enterprise Software from a third party's computers or machines under contract to the Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s): "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [*Insert the actual copyright date(s) from the source materials*] ESRI and its licensor(s). All rights reserved."

4.2 Uses Not Permitted

a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
g. Licensee shall not remove or obscure any ESRI or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
i. Hard-copy Documentation may not be copied.
j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

5.1 Term. The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual term license grants are provided with this ELA.

5.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

5.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to ESRI. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided for in this Article 6, ESRI warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

6.2 Data and Web Services Disclaimer. The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

6.3 Special Disclaimer. SAMPLES, PATCHES, AND HOT FIXES ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

6.4 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

6.5 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.6 Exclusive Remedy. Licensee's exclusive remedy and ESRI's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at ESRI's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for the Software subject to the ESRI Maintenance Program found at www.esri.com/legal/maintenance.html; or (iii) return of the license fees paid by Licensee for the Software or Documentation that does not meet ESRI's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or Documentation and executes and delivers evidence of such actions to ESRI.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

7.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 ESRI shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. patent, copyright, or trademark provided

a. Licensee promptly notifies ESRI in writing of the claim;
b. Licensee provides documents clearly describing the allegations of infringement;
c. ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
d. Licensee cooperates fully in the defense of the claim.

8.2 If the Software is found to infringe a U.S. patent, copyright, or trademark, ESRI, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to ESRI, the license shall terminate, and Licensee shall uninstall the infringing items. ESRI's entire liability shall then be to indemnify Licensee pursuant to section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 ESRI shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the Software by (i) the combination of or integration with a product, process, or system not supplied by ESRI; (ii) material alteration by anyone other than ESRI or contractors acting on behalf of ESRI; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by ESRI under section 8.2.

8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples delivered hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI AND ITS DISTRIBUTOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. ESRI may provide notice of the revisions to Licensee in writing or by posting them on ESRI's Web site at www.esri.com/legal. The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, in whole or in part, to (i) any U.S. embargoed country (or to a national or resident of any U.S. embargoed country); (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport violates any U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to U.S. export laws as they may occur from time to time.

9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. ESRI will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without ESRI's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall

have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable ESRI U.S. Software Maintenance Program document (found at www.esri.com/legal) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

   (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
   (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
   (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
   (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
   (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact ESRI Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
   (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact ESRI directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by ESRI

   (1) ESRI shall log the calls received from Tier 1 Help Desk individuals.
   (2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
   (3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
   (4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
   (5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee user.

ESRI may, at ESRI's sole discretion, make patches, hot fixes, or updates available for downloading from ESRI's Web site or deliver them on media.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. ESRI's Federal ID Number is 95-2775-732.
b. Upon receipt of the initial Purchase Order from Licensee, ESRI shall deliver media containing the Enterprise Software to Licensee for its Deployment activities. ESRI shall ship the media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid.
c. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
b. The following information shall be included in each Purchase Order:

   (1) Licensee name; ESRI customer number, if known; and bill-to and ship-to addresses
   (2) Purchase Order number
   (3) Applicable annual payment due
   (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of ESRI by Licensee. Licensee agrees that upon execution of the ELA, ESRI may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 OEM Licenses. If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of ESRI, Licensee shall not be entitled to or seek any discount from the OEM business partner or ESRI, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. ESRI's Product Life Cycle Support Policy, available at http://resources.arcgis.com/content/product-life-cycles,

defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle Support Status, which can be found at http://resources.arcgis.com/content/product-life-cycles.

13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

ARTICLE 14—OPTIONAL ITEMS

If additional Software identified in the ELA Quotation is acquired, it will be deemed added to the Enterprise Software Schedule and subject to the terms of this ELA. If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.

EXHIBIT 1
SCOPE OF USE
(E300 05/14/2010)

The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iPhone (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iPhone (1, 20, 25, and 33)
- ArcGIS Mapping
  - For Excel (5, 6, 33, and 35)
  - For SharePoint (5, 6, 31, 33, 35, and 47)
- ArcGIS Mobile Deployments (1, 15, 16, 25, and 33)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45)
- ArcGIS Server Extensions
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping APIs (including JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (either 1 or 2 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- ESRI Aeronautical Solution (either 1 or 2)
- ESRI Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- ESRI Business Analyst Server (either 3, 4, or 5 and 8, 9, 21, 25, 28, 31, 33, 39, 40, 45, and 48)
- ESRI Business Analyst Server Developer (6, 25, 33, 35, and 51)
- ESRI Defense Mapping (either 1 or 2)
- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- ESRI Nautical Solution (either 1 or 2)
- ESRI Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)

Data

- Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- ArcGIS Data Appliance (6, 23, 25, and 41)
- ESRI Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- ESRI Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer as long as only one (1) copy of the Software, Data, and Documentation is in use at any one (1) time. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
2. "Concurrent Use License." Licensee may install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
3. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Staging Server License." In addition to the Development Server License rights, Licensee may use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
5. "Deployment Server License." In addition to the Staging Server License rights, Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
6. License is provided only as a Term License. "Term License" means license provided for use in a limited time period or on a subscription or transaction basis.
7. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs.
8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee installs the Spatial Data Service.
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. U.S. Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects ESRI's rights in its Software, Data, Web Services, and Documentation to the same extent as the ESRI License Agreement including, but not limited to, the following terms:

    a. Sublicensee may not reverse engineer, decompile, or disassemble the ESRI Software, Data, Web Services, or Documentation, except to the extent permitted by applicable law; copy for commercial use; transfer; or assign its rights under the license grant;
    b. Sublicensee may not use any ESRI Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
    c. Third-party dependent or required components are redistributable subject to permission from the owner or author.

17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic ESRI-certificated files when used over the Internet. Licensee shall not use ESRI certification or reference ESRI as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class ESRI-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the ESRI License Agreement, and the recipient agrees to be bound by the terms and conditions of the

license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.

21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.
22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at http://www.esri.com/legal/, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at http://www.esri.com/legal/ for the specific Data accessed. The Use of Data Restrictions may be modified by ESRI from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to ESRI, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to four (4) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from Web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of four (4) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of ArcGIS Online Services or Microsoft Bing Maps are conditioned upon Licensee's acceptance of the ESRI Web Site and Service Terms of Use Agreement and the terms and conditions specific to ArcGIS Online Services or Microsoft Bing Maps found at http://www.esri.com/legal/.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Reserved.
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with ESRI Business Analyst and ESRI Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee has also installed the Microsoft SharePoint Server.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the ESRI reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of ESRI. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. ESRI MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each ESRI MapIt server license.
51. ESRI Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of ESRI. Licensee shall treat any source code file identified as "Software" in a README file or at http://www.esri.com/legal/ as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:

    a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com or example.com.xx (where xx is a registered country code), *example* is the principal registered unique domain identifier.
    b. A license for desktop applications is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

EXHIBIT 2
TRAINING ADDENDUM
(E207CWM 9/09)

ARTICLE 1—TRAINING DESCRIPTION

ESRI offers instructor-led training related to the use of its proprietary GIS software. ESRI will provide to Licensee a fixed number of days of Instructor-Led Training, as defined in the Small Enterprise Training Package included in the ELA. Instructor-led training events occur at an ESRI Learning Center or via the Web. The ESRI software training course(s) to be conducted, location, and schedule dates are set forth in the *ESRI Course Catalog* located on ESRI's Training Web site (http://training.esri.com). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training Web site. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual where applicable.
- ESRI will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of ESRI's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Licensee must not resell seat(s) to an ESRI training class unless explicitly authorized in writing by ESRI.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on ESRI's Training Web site.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- U.S. government export control laws and regulations prohibit U.S. persons from engaging in transactions with certain denied persons found on various U.S. Government Denied Persons lists (e.g., U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training class. Licensee must submit the list of Student names to ESRI at least three (3) business days before the class start date. Any Student that is found on any of the various U.S. Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to U.S. government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to ESRI's Customer Service of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for ESRI training as found at http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

Licensee may cancel or reschedule Student attendance in training up to three (3) working days before the scheduled class start date. In the event of a cancellation, Licensee will reimburse ESRI for any reasonable travel and shipping expenses incurred by ESRI. In the event Licensee does not notify ESRI at least three (3) days prior to the scheduled training date, ESRI will deduct the appropriate number of class days from the remaining account training days.

If ESRI is unable to conduct the training on the scheduled date, ESRI will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

Students may transfer from one scheduled ESRI Learning Center class to another up to two (2) times at no additional charge. Subsequent transfers may be assessed an additional nonrefundable transfer fee.

Student substitutions, when a Student's place in class is filled by another person from the same organization, are allowed provided that ESRI Customer Service is notified three (3) business days in advance of the class start date.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- The training days are available for a period of thirty-six (36) months, commencing on the Effective Date, or when all training days are consumed, whichever is sooner.
- Licensee is committed to scheduled training days when ESRI training requests are received and accepted by ESRI.
- ESRI will invoice for outstanding training expenses where applicable.
- Upon the anniversary, unused training days are forfeited.
- Training days are nontransferable and nonrefundable for any other ESRI products or services.

ARTICLE 6—CONFIDENTIAL INFORMATION

ESRI or the Licensee may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

ARTICLE 7—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, ESRI and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 8—WARRANTY

ESRI will provide training in a manner consistent with the technical and professional standards of the industry.

8.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 9—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 10—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

SOLE SOURCE PROCUREMENT

"**Sole Source**" purchasing requires that a good faith review of available sources has been made and there is only one source that can be identified for the required supply, service, and/or construction item and is the only one that will meet the needs of the Town.

Directions: *1. Enter description of sole source procurement.*
2. Enter name of sole source vendor and address.
3. Enter the determination and basis for sole source procurement.
4. Attach sole source letter from vendor.
5. Attach proposal from vendor with pricing.

1. Description of Item or Service proposed for sole source: __Small Municipality and County Enterprise License Agreement to allow the Town of Palm Beach to use the ESRI software licenses with unlimited access and support for the purpose of accessing Town data geographically. All of the software from ESRI has to be purchased as a license from ESRI directly as ESRI is the owner of the software.

2. Vendor Name: ESRI Inc.

Address: Customer Service SG-ELA 380 New York Street Relnads, CA 92373-8100

3. The basis for this sole source determination and the reason no other vendor/product is suitable: ESRI is the owner and only company that sells this GIS software that is currently in use by the Town. The ESRI software is used to store and access Town data geographically and is the industry standard for this function. All of the Town's current geographic systems are based on the ESRI software platform. . ESRI is also used by the county and other municipalities within the county for their geographic systems. Because we have to share data with these other agencies, it is critical that the software systems be the same. The Town use county data on regular basis for updates as well as data from other cities to continue to grow and enhance the information available to the Town.

This sole source request has been provided, fully understanding the implications of Section 838.22 of the Florida Statutes:
(2) "It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole source contract for commodities or services."
(5) "Any person who violates this section commits a felony of the second degree, punishable as proved in s. 775.082, s. 775.083, or s. 775.084."

Spencer D. Wilson

Digitally signed by Spencer D. Wilson
DN: cn=Spencer D. Wilson, o=Town of Palm Beach, ou=Information Systems, email=swilon@townofpalmbeach.com, c=US
Date: 2011.01.25 11:26:38 -05'00'

Information Systems
Department/Division

Authorized Signature

1/25/11
Date

I.S. Manager
Title

☑ Approved
☐ Disapproved

☐ Approved
☐ Disapproved

Purchasing Agent

Town Manager

PURFORM 03-24-2006

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 8-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Removal of a Historic or Specimen Tree From a Property Loceated Within the Town of Palm Beach; and Providing That a Copy of this Resolution be Recorded in the Public Records of Palm Beach County, Florida.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum Dated January 26, 2011, from H. Paul Brazil, Director of Public Works.
- Resolution No. 8-11
- Letter from Robert Haehle, dated December 19, 2010.
- Letter to Resident, dated December 29, 2010.

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Historic/Specimen Tree De-designation at 14 South Lake Trail
Resolution No. 8-11

Date: January 26, 2011

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 8-11 so that changes in historic or specimen tree designations can be recorded with the Palm Beach County Clerk of Courts.

GENERAL INFORMATION

On December 10, 2010, the Town's horticultural consultant, Bob Haehle, was asked to re-inspect the Historic/Specimen Brazilian Beautyleaf (Calophyllum Brasiliense) tree at 14 South Lake Trail because the property owner called and reported that the tree had died despite vigorous efforts earlier in the year to save it. Upon inspection, Mr. Haehle determined that the tree was indeed dead and should be removed from the historic/specimen tree list. Please see the attached report from the Town's horticultural consultant regarding this tree. This change will be recorded in the official records of Palm Beach County.

TOWN ATTORNEY REVIEW

The attached resolution is in the standard format which has previously been approved by the Town Attorney.

Attachments

cc: John Page, Director of Planning, Zoning, and Building
Eric Brown, Assistant Director of Public Works
Rob Walton, Lead Code Enforcement Officer
Cindy Hoyt, Garden Club of Palm Beach
Ed Armstrong, Parks/Streets Supervisor

RESOLUTION NO. 8-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE REMOVAL OF A HISTORIC OR SPECIMEN TREE FROM A PROPERTY LOCATED WITHIN THE TOWN OF PALM BEACH; AND PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

* * * * *

WHEREAS, pursuant to Section 126-57 and Section 126-59 of the Town Code of Ordinances relating to preservation of historic and specimen trees, procedures are outlined for the designation, de-designation and annual inspection of certain trees as historic or specimen trees; and

WHEREAS, the Town Council of the Town of Palm Beach has undertaken the procedures required to de-designate a tree located on a property within the Town as an historic or specimen tree; and

WHEREAS, the Town Council of the Town of Palm Beach desires to record said de-designation in the public records of Palm Beach County, Florida, pursuant to the terms of said ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. A tree previously recorded on Resolution No. 4-99 in the public records of Palm Beach County, Florida, as ORB 11193, Pg. 1974, designated as historic or specimen, shall be **REMOVED** from the following described property:

PCN/Legal Description	Location	Count	Common Name	Botanical Name
50-43-43-22-00-003-0010 22-43-43, W 249 FT OF N ½ OF SUB N OF GOV LT 3 & UNNUMBERED PAR LYG W OF LAKE TRAIL IN OR1656P480 AND POINCIANA PARK	14 S. Lake Trail	1	Brazilian Beautyleaf	Calophyllium Brasiliense

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

_____	_____
Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	_____
	To be determined on 2/15/11, Town Council President Pro Tem
	_____
	, Town Council Member
	_____
ATTEST:	, Town Council Member
_____	_____
Cheryl Somers, Acting Town Clerk	, Town Council Member

Robert Haehle
Landscape Consultant
(954) 735-2022

12/19/2010
Ed Armstrong
Town of Palm Beach Public Works Department
951 Old Okeechobee Road
West Palm Beach, Fl. 33401

Calophyllum Tree at 14 South Lake Trail

On 12/10/2010 Ed Armstrong and I met with the caretaker at 14 South Lake Trail. The tree was badly injured in last years freeze but put out some new growth over the summer. The recent cold spell killed the weakened tree and it is now dead. I would recommend de-designation of the Calophyllum tree from the historic/specimen tree list.

Robert Haehle
Landscape Consultant
4707 NW 49th Drive
Tamarac, Fl. 33319-3644
954-735-2022

TOWN OF PALM BEACH

Office of the Town Manager

December 29, 2010

Mrs. Phyllis Fireman
14 South Lake Trail
Palm Beach, FL 33480

Re: Historic/Specimen Tree Dedesignation - Brazilian Beautyleaf (Calophyllum)

Dear Mrs. Fireman:

This is to advise you that on December 10, 2010, Robert Haehle, the Town's Landscape Consultant, and Ed Armstrong, Parks/Streets Supervisor, met with your employee Maria, to inspect the specimen Brazilian Beautyleaf at your request.

Upon inspection, the subject Brazilian Beautyleaf was found to be dead. It had rapidly declined since Mr. Haehle last visited it in November. It is recommended that this tree be dedesignated and removed from the historic/specimen tree list. I have attached a copy of Mr. Haehle's report for your records.

The necessary resolution for dedesignating this tree will be on the Town Council agenda for the February 15, 2011, meeting, which you are invited to attend. Please note that removal of the tree should wait for Town Council approval of the proposed dedesignation, unless it becomes a safety hazard in the interim.

If you have any questions, please do not hesitate to contact me (838-5410) or the Public Works staff (838-5440) at your convenience.

Sincerely,

Peter B. Elwell
Town Manager

PBE:mks
Attachment
cc: H. Paul Brazil, Director of Public Works
Cindy Hoyt, President, Garden Club of Palm Beach

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5410 • Facsimile (561) 838-5411
Email: townmanager@townofpalmbeach.com • Website: www.townofpalmbeach.com

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 10-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Contractual Service Specialists Agreement Between the Town of Palm Beach and Kenneth A. Scheppke, M. D., P.A., as Medical Director and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

Kirk Blouin, Chief of Police

Supporting Documents

- Memorandum dated January 28, 2011, from Kirk Blouin, Chief of Police
- Resolution No. 10-11
- Contractual Service Specialists Agreement for EMS Medical Director Services

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk Blouin, Police Chief

Re: Contractual Service Specialists Agreement for EMS Medical Direction Services
Resolution No. 10-11

Date: January 28, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No. 10-11 authorizing the Town Manager to enter into a twelve (12) month agreement, with the option to renew the agreement for up to two (2) additional twelve (12) month periods, with Kenneth A. Scheppke, M.D., P.A. for the provision of Emergency Medical Services (EMS) Medical Director services for the amount of $24,000 annually.

GENERAL INFORMATION

The Town of Palm Beach provides advanced life support (ALS) emergency medical services to the citizens and visitors of the Town. Florida State Statute 401.25 requires that every person, firm, corporation, association, or governmental entity which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of providing prehospital advanced life support services must be licensed by the State as an advanced life support service. Florida State Statute 401.265 requires that each advanced life support service must employ or contract with a medical director meeting the requirements of that statute as well as the requirements stated in 64J-1 of the Florida Administrative Code. Dr. Kenneth Scheppke meets and exceeds the State requirements for EMS Medical Directors and has extensive experience as an EMS Medical Director. He is the current medical director for the EMS Training Program at Palm Beach State College, and the EMS Medical Director for both Boynton Beach Fire Rescue and Palm Beach Gardens Fire Rescue. He is also the Assistant Emergency Room Director for JFK Medical Center.

FUNDING/FISCAL IMPACT

The Medical Director shall be paid the amount of $24,000.00 per year. The funds for this contract are included within Fire-Rescue's annual budget.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed Resolution No. 10-11 and approves such as to legal form and sufficiency.

KB/dd
cc: Jane Struder, Finance Director
Lynda Venne, Purchasing Agent

RESOLUTION NO. 10-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE CONTRACTUAL SERVICE SPECIALISTS AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND KENNETH A. SCHEPPKE, M.D., P.A., AS MEDICAL DIRECTOR AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

* * *

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The Contractual Service Specialists Agreement between the Town of Palm Beach and Kenneth A. Scheppke, M.D., P.A., as Medical Director, is hereby approved.

Section 2. The Town Council of the Town of Palm Beach hereby authorizes the Town Manager to execute the Contractual Service Specialists Agreement on behalf of the Town.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

CONTRACTUAL SERVICE SPECIALISTS AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of February, 2011, by and between the TOWN OF PALM BEACH, a municipal corporation under the laws of the State of Florida, (hereinafter called "TOWN") and Kenneth A. Scheppke, M.D., P.A., a Florida licensed physician, (hereinafter called "Medical Director")

WITNESSETH:

WHEREAS, the Town of Palm Beach Fire-Rescue Department provides an Emergency Medical Service system which employs Paramedics and to perform advanced life support (ALS) and Emergency Medical Technicians to perform basic life support (BLS); and

WHEREAS, Florida Statute 401.265 requires that the entity which provides such a service shall engage a Medical Director; and

WHEREAS, the aforementioned Statute and Chapter 64J-1 and 64J-2 of the Florida Administrative Code set out certain criteria and requirements for said Medical Director; and

WHEREAS, the Town of Palm Beach desires to retain a licensed physician to serve as Medical Director;

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. Contract:
The TOWN does hereby engage Kenneth A. Scheppke, M.D., P.A. as Medical Director for the TOWN'S Emergency Medical Service system to undertake the duties and responsibilities of the Medical Director as described herein, along with other obligations included within this agreement.

2. Term:
The TOWN agrees to retain the Medical Director and the Medical Director agrees to be retained in an independent contractor relationship for the term of one year, commencing as of February 13, 2011 unless extended hereafter by mutual agreement of the parties or cancelled in accordance with the terms of this agreement.

In the event services are scheduled to end because of the expiration of this Agreement, the Contractor shall continue the service upon the request of the Fire Chief. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing Agreement. The same terms and conditions that are in effect at the end of the natural term of this Agreement shall remain in effect for the (90) day period.

3. Renewal of Contract:
The Contract shall be awarded for a period of twelve (12) months, with the option to renew the contract for up to two (2) additional twelve (12) month periods. Option for renewal will only be exercised upon written mutual agreement and with all original terms, conditions, and pricing. Price adjustments may be considered upon renewal and shall be based on the percent change in the Consumer Price Index. The Consumer Price

Index shall be based upon All Urban Consumers, for the Miami-Fort Lauderdale Region, from June to June of each prior and renewal year respectively, as published by the United States Department of Labor.

Contract renewal shall be based on satisfactory performance, mutual acceptance and determination that the contract is in the best interest of the Town. Any renewal will be subject to appropriation of funds by the Town Council.

4. Termination:
This agreement is subject to cancellation without cause by either party to this agreement upon thirty (30) days written notice. Such notice shall be forwarded by registered mail to the last known address of the other party.

This agreement is subject to immediate cancellation for cause. The Town may immediately be entitled to terminate this Contract in the event:

(a) Medical Director fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified by the Town;

(b) Medical Director violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;

(c) Medical Director materially breaches any of the provisions of this Contract.

5. Contract Fee:
The Medical Director shall be paid the amount of twenty-four thousand and 00/100 dollars ($24,000.00) per annum. Payments shall be made by the TOWN on a monthly basis, at a monthly rate of two thousand and 00/100 dollars ($2,000.00) with such amount being all inclusive. The TOWN shall remit payment within thirty (30) days upon receipt of a proper invoice from the Medical Director.

6. Independent Contractor Relationship:
The Medical Director is an independent contractor who will be responsible for payment of Federal Withholding Tax and Social Security Contributions. Furthermore, the Medical Director shall not be entitled to any fringe benefits normally provided TOWN employees, such as Workers' Compensation Insurance Coverage, Unemployment Compensation, Retirement, Disability Leave, and any leave with pay.

7. Professional Liability Provision:
The TOWN agrees to provide the Medical Director insurance coverage for Professional Liability and Medical Malpractice with liability limits no less than $1,000,000 (one million dollars) for claims arising out of the scope and performance of activities as specified in this contract and specifically as Medical Director for the Town of Palm Beach.

Nothing contained herein is intended nor shall be construed to waive the TOWN'S sovereign immunity rights as provided for by Florida Statutes.

Nothing in this agreement shall be construed as expanding the liability of the Medical Director beyond that provided for in the laws of the State of Florida and such valid regulations as may be promulgated thereunder.

8. Duties and Responsibilities of the Town

(a) The TOWN shall meet or exceed all applicable standards and requirements of the State of Florida for licensure as an Advanced Life Support (ALS) EMS provider, and shall become and remain so licensed where applicable by the County and State. The TOWN shall further ensure that its employees, where applicable, to include without limitation paramedics and emergency medical technicians, become and remain certified and licensed as appropriate under the laws of the State of Florida.

(b) The TOWN shall ensure that paramedics, emergency medical technicians, and other employees attend such educational programs and activities as shall be deemed necessary by the TOWN and the Medical Director.

(c) The TOWN shall make every effort to comply with all directives and procedures of the Medical Director relating to the quality and quantity of care rendered by the emergency medical system and shall ensure that its employees also comply with such directives and procedures.

(d) Subject to the limitations of F.S. 768.28, the TOWN agrees to defend, indemnify and hold harmless the Medical Director from any and all claims, liabilities, causes of action, attorney's fees and costs, whatsoever resulting from or in connection with the conditioning, limiting, modification, suspension and/or prohibition of any paramedic or emergency medical technician’s medical performance privileges. Nothing herein shall be construed to waive any of the provisions of F.S. 768.28.

9. Duties and Responsibilities:

The Medical Director shall:

(a) Perform all services required pursuant to Florida Statutes Chapter 401, Section 401.46, Chapter 64J-1 and 64J-2, Florida Administrative Code; duties and regulations promulgated by the Florida Department of Health and Rehabilitative Services; and all rules and regulations of any governmental agencies implementing said Chapter or other established duties required to be performed by said Medical Director.

(b) At all times, meet the applicable requirements and obligations of Florida State Statute 395, 401, 499, 893 and Florida Administrative Code 64J-1 and 64J2.

(c) Retain a current and valid Florida M.D. or D.O. license at all times during the term of the Agreement.

(d) Be board certified and active in a broad-based clinical medical specialty with demonstrated experience in pre-hospital care and hold an ACLS certificate or equivalent as determined in Chapter 64J-1.022, F.A.C.

(e) Obtain and possess proof of current registration as a Medical Director, either individually or through a hospital, with the US Department of Justice, DEA, to provide controlled substances to the Palm Beach Fire-Rescue Department. Proof of such registration shall be maintained on file with the Palm Beach Fire-Rescue Department and available for inspection.

(f) Assume direct responsibility for the medical performance of all Paramedic and EMT certificate holders operating for the Town of Palm Beach Fire-Rescue Department (this includes Lifeguard/EMTs). The Medical Director shall provide notice to the Florida Board of Medicine in accordance with the requirement of Section 458.348(1), Florida Statutes (2010), as may be amended from time to time. Notice shall be filed within 30 days of entering into the relationship, orders, or protocol. Notice also shall be provided within 30 days after the physician has terminated any such relationship, orders, or protocol.

(g) Provide medical oversight for the TOWN'S Medical Priority Dispatch System program.

(h) Develop and authorize, or review and authorize for use, medically correct standing orders and/or protocols which permit specified ALS and BLS procedures. Standing orders and protocols shall ensure that patients are transported to facilities that offer a type and level of care appropriate to the patient's medical condition. The medical director or his appointee shall provide continuous 24-hour-per-day availability of medical director "off-line" service for potential problems, system conflicts, and disaster events.

(i) Develop and authorize, or review and authorize for use, medically correct Trauma Transport Protocols which permit specified ALS and BLS procedures and ensure that patients are transported to facilities that offer a type and level of care appropriate to the patient's medical condition.

(j) Develop and authorize, or review and authorize medically correct health promotion and wellness activities and blood pressure screenings that may be performed by TOWN paramedics in accordance with 401.272, F.S.

(k) Develop and authorize, or review and authorize a written agreement between the medical director and the county health department that establish the medically correct protocols, policies, and procedures under which TOWN paramedics may administer immunizations in a nonemergency environment, within the scope of their training. The Medical Director shall document on Department of Health Form 1256 that TOWN paramedics who administer immunizations have received sufficient training to administer immunizations.

(l) Supervise, set standards, and establish procedures for the medical performance of the emergency medical technicians and paramedics functioning for the TOWN'S Fire-Rescue Department, as specified in applicable laws of the State of Florida and such valid regulations as are promulgated thereunder.

(m) Assess the medical performance of Paramedic and EMT Certificate holders by use of a quality assurance program to include, but not be limited to, a prompt review of run reports, direct observation, and comparison of performance standards for drugs, equipment, and established protocols and procedures. The Medical Director shall be responsible for participating in quality assurance programs developed by the Department.

(n) Create, authorize, and ensure adherence to detailed, written operating procedures regarding all aspects of the handling of medications, fluids, and controlled substances. Ensure and certify that security procedures for medications, fluids and controlled substances are in compliance with Chapter 499 F.S., Chapter 893. F.S., and Section 64J-1, F.A.C.

(o) Review and approve TOWN'S paramedics and emergency medical technician refresher/renewal course.

(p) Ensure that all paramedics and emergency medical technicians are trained in the use of trauma scorecard methodology as provided in Section 64J-1, F.A.C.

(q) Participate in direct contact time with TOWN paramedics and emergency medical technicians through direct field observation ride time and/or delivery of with continuing medical education related to pre-hospital care or teaching or a combination of both for a minimum of 12 hours per year. This participate shall occur at a minimum of at least three (3) hours every calendar quarter.

10. Authority:

(a) The operation and administrative control of the TOWN'S emergency medical services will be vested in the Town Manager or his designee and the Medical Director shall be responsible to the Town Manager or his designee.

(b) The Medical Director shall retain the supervisory authority necessary to require that the medical performance of the paramedic or emergency medical technician's of the TOWN is of a quality and type for which the individual Medical Director is willing to take direct responsibility. Consistent with that supervisory authority, the Medical Director may advise, consult, train, counsel and oversees services. The oversight of services includes, but is not limited to, appropriate quality assurance programs.

(c) The Medical Director shall retain the ultimate authority to condition, limit, modify, suspend and/or prohibit any paramedic or emergency medical technician's medical performance while operating for the TOWN consistent with the Medical

Director's direct responsibility for the medical performance of all paramedic and emergency medical technician's operating for the TOWN.

Such conditioning, limitation, modification or suspension of a paramedic or emergency medical technician's medical performance while operating for the TOWN can include requirement of completion of Medical Director identified training as a precondition for some or all parts of the paramedic or emergency medical technician's medical performance while operating for the TOWN.

The Medical Director shall immediately notify the Town Manager or his designee of the change of eligibility of any paramedics or emergency medical technician to perform emergency medical care.

(d) All persons employed by the TOWN who are subject to the medical supervision of the Medical Director, to include without limitation emergency medical technicians and paramedics, shall not be considered or construed to be employees of the Medical Director, but rather are and shall be considered and construed to be solely the employees of the TOWN. The TOWN shall pay all wages, workers' compensation, unemployment, and social security taxes applicable thereto.

(e) The Medical Director is not authorized to obligate the expenditure of TOWN Funds.

11. Confidentiality:
The Medical Director shall carry out the obligations under this agreement in compliance with the privacy regulations pursuant to Public Law 104-191 of August 21,1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F - Administrative Simplification, Sections 261, et seq., as amended ("HIPAA") to protect the privacy of any personally identifiable protected health information that is collected, processed, or learned as a result of the services provided to the Palm Beach Fire-Rescue Department. In conformity therewith, the Medical Director agrees to abide by the conditions set forth in Appendix A.

12. Interpretation and Binding Effect:
Except as herein otherwise provided, this agreement shall inure to the benefit of and shall be binding upon the parties hereto, their personal representative, successors, heirs, and assigns.

13. Invalidity or Unenforceability:
Invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provisions.

14. Governing Law:
This agreement shall be governed and construed in accordance with the laws of the State of Florida.

15. Entire Agreement:
This agreement contains the entire understanding between the parties and may not be changed or modified except by an agreement in writing signed by all the parties.

CONTRACTUAL SERVICE SPECIALISTS AGREEMENT

TOWN OF PALM BEACH

ATTEST

_____
Peter B Elwell
Town Manager

_____
Cheryl Somers
Interim Town Clerk

MEDICAL DIRECTOR

By: _____
Kenneth A. Scheppke, M.D., P.A.
Medical Director

By: _____
John C Randolph
Town Attorney

By: _____

Fire Rescue Chief

APPENDIX A

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Subtitle F Administrative Simplification, Sections 261, et seq., as amended, the Medical Director agrees to:

- Not use or further disclose protected health information (PHI) except as permitted under this agreement or required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this agreement;
- To mitigate, to the extent practicable, any harmful effect that is known to the Medical Director of a use or disclosure of PHI by the Medical Director in violation of this agreement;
- Report to the Palm Beach Fire-Rescue Department any use or disclosure of PHI not provided for by this agreement of which the Medical Director becomes aware;
- Ensure that any agents or subcontractors to whom the Medical Director provides PHI or who have access to PHI, agree to the same restrictions and conditions that apply to the Medical Director with respect to such PHI;
- Make PHI available to the Palm Beach Fire-Rescue Department and to the individual who has a right of access as required under HIPAA;
- Incorporate any amendments to PHI when notified to do so by the Palm Beach Fire-Rescue Department;
- Provide an accounting of all uses or disclosures of PHI made by the Medical Director as required under the HIPAA privacy rule;
- Make internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining the Medical Director's and the Palm Beach Fire-Rescue Department's compliance with HIPAA; and
- At the termination of this agreement, return or destroy all PHI received from, or created or received by the Medical Director on behalf of the Palm Beach Fire-Rescue Department.
- Comply with all other requirements contained therein, not otherwise specified in this Appendix.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 13-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Approving Hy-Byrd Inc, As The Highest Ranked Firm And M.T. Causley Inc. As The Second Highest Firm Responding To RFP No. 2010-28 For Plan Review And Inspection Services Based Upon Their Proposals And The Selection Committee's Recommendations Pertaining Thereto; Authorizing Staff Negotiations With Hy-Byrd Inc. And M.T. Causley Inc. And Other Firms Responding To The RFP In The Order Of Their Ranking Should Negotiations Be Unsuccessful With Hy-Byrd Inc. And/Or M.T. Causley Inc., And Authorizing The Town Manager To Execute A Negotiated Contract On Behalf Of The Town For Plan Review And Inspection Services Subject To The Town's Adopted Budget For Said Program And The Town Attorney's Approval Of The Negotiated Contract For Legal Form And Sufficiency.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated February 2, 2011, from John Page
- Resolution No. 13-11

TOWN OF PALM BEACH

Information for Town Council Meeting: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Planning, Zoning & Building Department Director

Date: February 2, 2011

Re: Plan Review and Inspections
Selection Committee Recommendations and Contract Approval
Resolution No. 13-11

STAFF RECOMMENDATION

Staff recommends that the Town Council adopt Resolution No. 13-11 approving the two top-rated vendors (Hy-Byrd, Inc. and M.T. Causley, Inc.) as scored by the Selection Committee (Tom Bradford, John Page, Jeff Taylor and Jim Bowser) for providing back-up plan review and inspection services to the Planning, Zoning & Building Department, and authorizing the Town Manager to enter into contracts with such firms in accordance with Town purchasing procedures.

GENERAL INFORMATION

The Planning, Zoning & Building Department employs one full-time plans examiner (responsible for review of building plans in accordance with the local Building Code) and five full-time inspectors (collectively responsible for completing all building, electrical, mechanical and plumbing inspections). In order to contain personnel expenses, the Town has deliberately chosen to maintain staffing at such levels, and to bolster the staffing contingent by contracting with private outside agencies for supplemental plan review and inspection services. This contractual arrangement is quite common in local jurisdictions throughout Florida. Contracting for such services allows local jurisdictions to avoid the necessity of hiring additional personnel during times of heavy workloads, to avoid layoffs when activity levels wane, to avoid undue delays in processing permits and completing inspections during busy times, to provide for continuous uninterrupted services when full time staff is away for any reason, etc. The Department has utilized such outside resources since the 1980's.

At present, the Town contracts with two firms (Hy-Byrd, Inc. and Tew & Taylor, Inc.) for such services. These contracts consist of simple "letters of agreement" that no longer reflect the full-range of issues and provisions that are now routinely incorporated into contract. Staff recognized the need to go out to bid and ensure that the Town is receiving services at a cost which reflects current market rates, and to improve/update such contracts in accord with the norm now being employed by the Town. Working in close cooperation with the Town's

Purchasing Agent, an RFP was prepared for plan review and inspection services and properly advertised. The Town received ten proposals for such services. The Selection Committee scored each proposal, and subsequently invited the top four firms to present further information to the Committee. Following interviews, each Committee member scored the finalists. Hy-Byrd and M.T. Causley were the two highest-scoring contractors, and are herein presented to the Town Council for selection and contract approval.

Hy-Byrd is based in Lake Worth. The Company has successfully provided limited plan review and inspection services to Palm Beach for over 12 years. M.T. Causley is based in Homestead and has provided services to a variety of South Florida communities. The Company has a well-qualified, licensed, trained and experienced team of professionals. Each company is poised and capable of providing either or both plan review and inspection services to the Town with as little as 24 hours advance notice (even less when sudden needs arise).

FUNDING/FISCAL IMPACT

Each firm submitted hourly rates that fluctuate depending upon variables such as part-time vs. full-time work, expedited reviews, straight-time vs. inspections following natural disasters, etc. Hy-Byrd, one of the Town's existing service providers and the top-scoring applicant, now charges the Town $50/hour for most services. Per the recently completed RFP process, that hourly rate will drop to $48/hour. M.T. Causley, the second top-scoring company, offers its services at an "average" rate of $62/hour (comparable to rates submitted by the original ten proposers).

Because Hy-Byrd has a proven, positive experience with the Town and can provide plan review and inspection services at the best price, it is the Department's intent to utilize Hy-Byrd as its "primary" contractor, directing as much work as possible to that company. M.T. Causley is intended to be a "secondary" provider, called into service when and if the primary source cannot satisfy local demand or cannot deliver services to the satisfaction of the Department.

The Town regularly budgets for all expenses associated with outside plan review and inspections. No additional budgetary need is anticipated.

PURCHASING REVIEW

This procurement has been reviewed and approved by the Purchasing Division of the Finance Department and award is hereby recommended by the Selection Committee.

RESOLUTION NO. 13-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING HY-BYRD INC, AS THE HIGHEST RANKED FIRM AND M.T. CAUSLEY INC. AS THE SECOND HIGHEST FIRM RESPONDING TO RFP NO. 2010-28 FOR PLAN REVIEW AND INSPECTION SERVICES BASED UPON THEIR PROPOSALS AND THE SELECTION COMMITTEE'S RECOMMENDATIONS PERTAINING THERETO; AUTHORIZING STAFF NEGOTIATIONS WITH HY-BYRD INC. AND M.T. CAUSLEY INC. AND OTHER FIRMS RESPONDING TO THE RFP IN THE ORDER OF THEIR RANKING SHOULD NEGOTIATIONS BE UNSUCCESSFUL WITH HY-BYRD INC. AND/OR M.T. CAUSLEY INC., AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A NEGOTIATED CONTRACT ON BEHALF OF THE TOWN FOR PLAN REVIEW AND INSPECTION SERVICES SUBJECT TO THE TOWN'S ADOPTED BUDGET FOR SAID PROGRAM AND THE TOWN ATTORNEY'S APPROVAL OF THE NEGOTIATED CONTRACT FOR LEGAL FORM AND SUFFICIENCY.

WHEREAS, the Town Council wishes to retain the services of two (2) plan review and inspection services firms in order to process selected building permit applications and inspections on an as-needed basis in a timely manner and in keeping with the standards of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1: The Selection Committee's ranking of the Plan Review and Inspection Services firms responding to the Town's Request for Proposals Number 2010-28 is hereby approved with Hy-Byrd Inc. being the highest ranked firm, and M. T. Causley Inc. being the next highest ranked firm.

Section 2: Town staff is authorized to commence negotiations with the two top-ranked firms, Hy-Byrd Inc., and M.T. Causley Inc., and the other firms responding to Request For Proposal No. 2010-28 in the order of their ranking should negotiations be unsuccessful with Hy-Byrd Inc., and/or M.T. Causley, Inc.

Section 3: The Town Manager is hereby authorized to execute a negotiated contract with the two successful firms subject to the Town's adopted plan review and inspection contract services budget and the Town Attorney's prior approval of the negotiated contract in advance of Town Manager execution.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO 14-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement Between the Town of Palm Beach and the Palm Beach County Board of Commissioners for an Urban Area Security Initiative Grant in the Amount of $50,000; and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated February 7, 2011, from Jay Boodheshwar, Director of Recreation and Special Projects
- Resolution No. 14-11
- Exhibit A

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: UASI Grant Agreement for the Development of a CEMP for the Town of Palm Beach **Resolution No. 14-11**

Date: February 7, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council accept an Urban Area Security Initiative Grant in the amount of $50,000 for the purpose of developing a "municipality specific" Comprehensive Emergency Management Plan (CEMP), approve the use of contingency funds to "front" the money for this effort, and approve Resolution No. 14-11 authorizing the Town Manager to enter into an agreement with the Palm Beach County Board of Commissioners.

GENERAL INFORMATION

The Ft. Lauderdale Urban Area Security Initiative (UASI), which was created by the Federal Government's Department of Homeland Security, consists of the core cities of Fort Lauderdale, Miramar, Hollywood, Pembroke Pines, and Miami Gardens. The Ft. Lauderdale UASI has invited the Palm Beach County Board of County Commissioners and the Palm Beach County Sherriff's Office to participate in the Ft. Lauderdale UASI as equal partners with its core cities.

The Ft. Lauderdale UASI has provided $432,773 to the Palm Beach County Board of Commissioners as a sub-grantee and the Town of Palm Beach has been identified as a recipient of $50,000 of the funds granted to Palm Beach County. This $50,000 non-matching grant will be used to reimburse the Town for expenses to hire a consultant to develop an updated CEMP for the Town. The new CEMP will serve the Town as its guide for emergency situations and will also serve as a template for other Florida municipalities with populations of 30,000 or less. The Agreement, attached as Exhibit A, delineates the responsibilities of the Town and the County for activities under the FY2009 UASI.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency. The Agreement between the Town of Palm Beach and the Palm Beach County Board of Commissions has been reviewed and approved for legal form and sufficiency by the Town Attorney.

cc: Department Directors
Mike Galvin, EOC Coordinator
William Weinshank, PBC Division of Emergency Management

RESOLUTION NO. 14-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND THE PALM BEACH COUNTY BOARD OF COMMISSONERS FOR AN URBAN AREA SECURITY INITIATIVE GRANT IN THE AMOUNT OF $50,000; AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

* * * * *

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1: The Urban Area Security Initiative (UASI) Grant between the Town of Palm Beach and Palm Beach County Board of Commissioners, attached hereto as Exhibit "A" and incorporated by reference as a part of this resolution, is hereby approved and the Town Manager is authorized to execute the same on behalf of the Town.

Section 2: The UASI Grant is a reimbursable and non-matching grant, which will fund the development of a Comprehensive Emergency Management Plan for the Town of Palm Beach.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February, 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

This Contract is made as of the _____ day of _____, 2011, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "COUNTY", and The Town of Palm Beach, hereinafter referred to as the "AGENCY".

WHEREAS, the federal government created the Ft. Lauderdale Urban Area Security Initiative (UASI) which consists of the core cities of Fort Lauderdale, Miramar, Hollywood, Pembroke Pines, and Miami Gardens; and

WHEREAS, the Ft. Lauderdale UASI invited the Palm Beach County Board of County Commissioners and the Sheriff of Palm Beach County to participate in the Ft. Lauderdale UASI as equal partners with its core cities; and

WHEREAS, the Ft. Lauderdale UASI has identified the City of Miramar as its fiscal agent in all dealings related to the UASI; and

WHEREAS, the Ft. Lauderdale UASI, through the City of Miramar, will provide $432,773 (Four Hundred Thirty Two Thousand Seven Hundred and Seventy Three) as a portion of the FY2009 UASI Grant funds to Palm Beach County as a sub-grantee; and

WHEREAS, the Town of Palm Beach has been identified as a recipient of $50,000 (Fifty Thousand Dollars) of the funds granted to Palm Beach County.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the COUNTY and the AGENCY agree as follows:

ARTICLE 1 - PURPOSE

This Contract delineates the responsibilities of the AGENCY for activities under FY2009 Urban Area Security Initiative (UASI) which was made available by the U.S. Department of Homeland Security, through the Office for Domestic Preparedness and the State of Florida.

ARTICLE 2 - SCOPE

The provisions of this Contract apply to FY2009 UASI activities to be performed at the request of the federal government, and in conjunction with, preparation for, or in anticipation of, a terrorist event, as expressed in Attachment 1, Scope of Work, attached hereto and incorporated herein by reference.

ARTICLE 3- THE TOWN OF PALM BEACH AGREES TO:

A. Submit a detailed budget conforming to the Scope of Work (Attachment 1) prior to initiating any work or purchase of equipment, goods, or services.

B. Submit an acknowledgement that the AGENCY complies with the requirements identified/established by the National Incident Management System (NIMS) and the National Response Plan (NRP).

C. Comply with reporting requirements identified in Attachment 2 , attached hereto and incorporated herein by reference.

D. Maintain items purchased in working order for the life of the items.

E. If appropriate, provide the purchased items to the UASI for mutual aid allocation to other governmental agencies within the UASI region.

F. Complete the project as soon as possible and no later than the termination date set forth herein.

G. Submit a Final Invoice no later than April 30, 2012. In order for both parties to close their books and records, the AGENCY will clearly state "final invoice" on the AGENCY's final/last billing to the COUNTY. This shall constitute the AGENCY's certification that all

services have been properly performed and all charges and costs have been invoiced to the COUNTY. Any other charges not properly included on this final invoice are waived by the AGENCY.

H. Not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The AGENCY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

I. Maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the AGENCY's place of business.

J. Comply with the requirements of the UASI Grant Program FY2009 and the terms, conditions, certifications and other requirements contained in the Federally-Funded Subgrant Agreement between the State of Florida, Division of Emergency Management, and the City of Miramar, attached hereto as Attachment 3, attached hereto and incorporated herein by reference, including but not limited to budget authorizations, required accounting and reporting on fund usage, use of funds only for the intended purpose and tracking of federally funded assets.

ARTICLE 4 - PALM BEACH COUNTY AGREES TO:

A. Review invoices received from the AGENCY pursuant to this Contract. Invoices will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the UASI fiscal agent for review and approval. Upon approval by the UASI, the COUNTY will send the AGENCY'S approved invoice to the COUNTY's Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's submittal. Invoices not approved will be returned to AGENCY for correction and resubmittal.

B. Reimburse AGENCY an amount not to exceed $50,000 (Fifty Thousand Dollars) when properly invoiced, as provided in Article 3. G. and Article 4.A. above

ARTICLE 5 - TERM OF CONTRACT AND OBLIGATION TO PAY

A. The term of this Contract commences upon execution by the AGENCY and COUNTY and terminates on April 30, 2012 unless otherwise extended upon the written agreement of each party.

B. The COUNTY's performance and obligation to pay under this Contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 6 - INSURANCE

A. AGENCY shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. AGENCY shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by AGENCY are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AGENCY under the Contract.

Commercial General Liability AGENCY shall maintain Commercial General Liability at a limit of liability not less than **$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. AGENCY shall provide this coverage on a primary basis.

Business Automobile Liability AGENCY shall maintain Business Automobile Liability at a limit of liability not less than **$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event AGENCY doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing AGENCY to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. AGENCY shall provide this coverage on a primary basis.

Worker's Compensation Insurance & Employers Liability AGENCY shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. AGENCY shall provide this coverage on a primary basis.

Professional Liability AGENCY shall maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than **$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of AGENCY'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, AGENCY shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, AGENCY shall purchase a SERP with a minimum reporting period not less than 3 years. AGENCY shall provide this coverage on a primary basis.

Additional Insured AGENCY shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." AGENCY shall provide the Additional Insured endorsements coverage on a primary basis.

Waiver of Subrogation AGENCY hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then AGENCY shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should AGENCY enter into such an agreement on a pre-loss basis.

B. **Certificate(s) of Insurance** Prior to execution of this Contract, AGENCY shall deliver to the COUNTY'S representative as identified in Article 16, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten **(10)** day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County
c/o Department of Public Safety
20 South Military Trail
West Palm Beach, FL 33415

Umbrella or Excess Liability If necessary, AGENCY may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional

Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Right to Review COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 7 - LIABILITY

Each party to this Contract shall be liable for its own actions and negligence and, to the extent permitted by law, COUNTY shall be responsible to the AGENCY for any actions, claims or damages arising out of COUNTY's negligence in connection with this Contract, and AGENCY shall be responsible to COUNTY for any actions, claims, or damages arising out of AGENCY's negligence in connection with the Contract. The foregoing shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, or of any defense available to either party.

ARTICLE 8 - INDEMNIFICATION

The AGENCY shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of AGENCY. The foregoing shall not constitute a waiver of sovereign immunity beyond the limits set for the Florida Statute Section 768.28.

ARTICLE 9 - SUCCESSORS AND ASSIGNS

The COUNTY and the AGENCY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the AGENCY shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the AGENCY.

ARTICLE 10 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 11 - INDEPENDENT CONTRACTOR RELATIONSHIP

The AGENCY is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the AGENCY'S sole direction, supervision, and control. The AGENCY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the AGENCY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The AGENCY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 12 - CONTINGENT FEES

The AGENCY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the AGENCY to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the AGENCY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 13 - NON-DISCRIMINATION

The Participating Agency will not illegally discriminate against any employee or applicant for employment on the grounds of race, color, religion, sex, age, or national origin in fulfilling any and all obligations under this Agreement. The Parties shall not discriminate on the basis of race, age, religion, color, gender, ancestry, national origin, marital status, disability or sexual orientation.

ARTICLE 14 - SEVERABILITY

The invalidity or unenforceability of any provision or clause hereof shall in no way effect the validity or enforceability of any other clause or provision hereof.

ARTICLE 15 - MODIFICATIONS OF WORK

This Contract may be modified or amended only by mutual written consent of the Parties.

ARTICLE 16 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and AGENCY agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 12-Modifications of Work.

ARTICLE 17 - CRIMINAL HISTORY RECORDS CHECK

The AGENY shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if AGENCY'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The AGENCY acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the AGENCY shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

ARTICLE 18 - REGULATIONS, LICENSING REQUIREMENTS

The AGENCY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. AGENCY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 19 - NO THIRD PARTY BENEFICIARIES

This Contract and the provisions hereof are for the exclusive benefit of the Parties hereto and their affiliates and not for the benefit of any third person, nor shall this Contract be deemed to confer or have conferred any rights, express or implied, upon any other third person.

ARTICLE 20 - WAIVER AND DELAY

No waiver or delay of any provision of this Contract at any time will be deemed a waiver of any other provision of this Contract at such time or will be deemed a waiver of such provision at any other time.

ARTICLE 21 - ASSIGNMENT; BINDING CONTRACT

Neither party shall assign this Contract without the written consent of the other party, which consent shall not be unreasonably withheld or delayed. This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

ARTICLE 22 - GOVERNING LAW AND VENUE

This Contract shall be construed in accordance with the laws of the State of Florida. Any dispute arising with respect to this Contract is subject to the laws of Florida. Venue shall lie in Palm Beach County, Florida.

ARTICLE 23 - TERMINATION

This Contract may be terminated without cause by either party to the Contract upon sixty (60) days written notice to the other party.

ARTICLE 24 - PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL

Pursuant to Ordinance No. 2009-049, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with the County and receiving County funds shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect waste, corruption and fraud.

ARTICLE 25- NOTICES

Any notices to be provided hereunder shall be in writing and given by personal service, mailing the same by United States certified mail, return receipt requested, and postage prepaid or a nationally recognized overnight carrier, addressed as follows:

If to COUNTY to:	Vince Bonvento Assistant County Administrator & Director Department of Public Safety 20 South Military Trail West Palm Beach, FL 33415
With a copy to:	Palm Beach County Attorney's Office 301 North Olive Ave, 6th Floor West Palm Beach, FL 33401
If to AGENCY to:	Jay Boodheshwar Town of Palm Beach PO Box 2029 Palm Beach, FL 33480

IN WITNESS WHEREOF, the AGENCY has caused this Contract to be executed by its Executive Director, and the COUNTY has caused the Contract to be executed on behalf of its Board of County Commissioners.

Town of Palm Beach

By: _____
Peter B. Elwell, Town Manager
Town of Palm Beach

ATTEST: _____

DATE: _____

By: _____
TITLE

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Vince Bonvento,
Director of Public Safety Department

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

ATTEST: _____
DATE: _____

By: _____
TITLE

(corporate seal)

ATTACHMENT 1

SCOPE OF WORK

Town of Palm Beach
Guidance Templates for Writing Municipal CEMPs

The Town of Palm Beach enters into this contract and accepts this $50,000 FY2009 UASI Grant sub-grant allocation from the Public Safety Department of Palm Beach County to fund this project. This project involves hiring a consultant to develop a template for developing CEMPs for municipalities with populations of 30,000 or less. The Town of Palm Beach will then work with the consultant to develop a CEMP for the town using this structure. This project serves a dual purpose. The larger, broader impact would be a template that provides guidance to any city needing assistance writing a CEMP for its city. This provides a statewide benefit consistent with the State's guiding principles for funding. The secondary purpose is the Town will also have a workable CEMP for itself. Many municipalities try to mirror their County's CEMP but find they are too complicated or intricate for the city's needs. Rather than functioning in a supportive role to the County, actions are duplicative or even in conflict. The development of a "municipality specific" CEMP will aid Counties ability to plan for and respond to critical incidents in a more cohesive and direct manner. It directly supports the Targeted Capabilities

	COST
Consultant for Development of Municipal CEMP & Development of Municipal Template including distribution	**$ 50,000**
Total Sub-Grant Award	**$50,000**

ATTACHMENT 2

Reporting Requirements

The Agency shall provide the County with quarterly status reports and a close-out report. Quarterly status reports are due to the County no later than 30 days after the end of each quarter until submission of the close-out report. The ending dates for each quarter are March 31, June 30, September 30, and December 31. These reports shall include the current status and progress by the Agency in completing the work described in the Scope of Work (Attachment 1) and the expenditure of funds under this contract, in addition to any other information requested by the County.

Reimbursement of Expenses

In order for the authorized expenses to be reimbursed, the documentation in support of the expenses must be submitted to the Palm Beach County Public Safety Department. Examples of documentation are as follows:

- Executed Contracts
- Purchase Requisitions
- Purchase Order
- Paid Invoice
- Copies of checks
- Serial Number of Equipment Purchased
- Authorized Equipment List (AEL) Number
- Equipment Custodian
- Equipment Location
- Photographs of Equipment

Reimbursement claims are first submitted to the City of Miramar for submission to the Florida Department of Emergency Management (FDEM) for approval.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 15-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Pre-Construction Phase Contract to Burkhardt Construction, Inc., in the Amount of $49,950 and Establishing a Pre-Construction Phase Budget of $85,000 for (Construction Program Management) Construction Management at Risk Services for the D-15 (D-6 and D-7 Pump Station Improvements) and Authorizing the Town Manager to Enter into an Agreement Necessary to Complete this Phase of Said Improvements.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 2, 2011, from H. Paul Brazil, Director of Public Works.
- Resolution No. 15-11
- Burdkhardt Construction, Inc. Proposal
- Burkhardt Hourly Rates
- Selection Committee Rankings

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Ratification of Selection Committee Recommendation for Construction Manager at Risk
Resolution No. 15-11

Date: February 2, 2011

STAFF RECOMMENDATION

Town staff recommends that Town Council approve the ranking of the selection committee. Town staff further recommends that Town Council approve Resolution No. 15-11 authorizing the Town Manager to enter into an agreement for pre-construction services with Burkhardt Construction, Inc. in an amount of $49,950 to accomplish necessary plan review, site investigation and cost estimating associated with the D-15 (D-6 & D-7) Pump Station Improvements, and establish a pre-construction phase budget of $85,000.

GENERAL INFORMATION

Contractor Selection Process and Results:

Town staff issued a request for qualifications and received responses from nine contractors. Their qualifications were reviewed by the selection committee and approved by Town Council at the December 14, 2010, meeting. The selection committee consisted of Eric Brown, Gail Coniglio, and Jay Boodheshwar, who filled in for Thomas Bradford, due to time constraints. The contractors were ranked and the top five, in no order, were Burkhardt Construction, Inc., The Weitz Company, Wharton-Smith, Inc., Whiting-Turner Contracting Company, and Hedrick Brothers Construction. Each was invited to make a presentation and answer questions about their prior experience and their approach to this particular project. The selection committee then scored the three finalists with the unanimous final rankings as follows: (1) Burkhardt Construction, Inc., (2) Hedrick Brothers Construction, (3) The Weitz Company.

Construction Contract Type:

The Staff, at the December 14, 2010, Council meeting, discussed the benefit of utilizing the CM at Risk. The consensus of all was that a CM at Risk contract is an appropriate choice for this type of work since it allows the contractor to perform an extensive pre-construction review and participate in a very comprehensive determination of the agreed upon scope of work. Based on some of the uncertainties inherent in pump station construction work, it is the committee's recommendation that a low-bid contract approach not be used, since the risk is primarily retained by the owner and that arrangement creates a potential for an adversarial relationship. This project has the potential for unforeseen conditions that would typically lead to change orders and increased chance of litigation. The CM at Risk contract moves that potential risk to the contractor.

If Council chooses to move forward with a CM At-Risk contract, the first step will be to enter into a pre-construction services agreement with Burkhardt Construction, Inc. The contractor will submit a pre-construction proposal for consideration. That proposal will represent numerous tasks and activities associated with the pre-construction phase of the project, including plan review, site investigation, selective demolition, building inspection, preparation of subcontract scopes of work, cost estimating/schedule preparation and assistance in the procurement of long lead items. All these efforts are required to provide the most informed proposal possible from the contractor, to arrive at an accurate project cost guaranteed by the contractor. This guaranteed maximum price (GMP) will be one of the elements of the full project proposal, along with the sequence of work, project schedule, etc.

The GMP will be presented to the Town Council after it is developed, so that the total price for this work will be known before Council authorizes execution of the construction contract. Authorization at this time will reduce the project schedule by at least one month. Any unspent funds will return to the Accelerated Capital Improvement fund balance.

FUNDING/FISCAL IMPACT

Funding for this project is fully contained within the Accelerated Capital Improvement Program.

PURCHASING REVIEW

The Purchasing Division has reviewed the information provided.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed this resolution and approved for legal form and sufficiency.

Attachments

cc: Thomas G. Bradford, Deputy Town Manager
Jane Struder, Finance Director
Jay Boodheswar, Director of Recreation
Eric B. Brown, Assistant Director of Public Works
Douglas Terry, Water Resources Division Manager
Michael Roach, Project Engineer

RESOLUTION NO. 15-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A PRE-CONSTRUCTION PHASE CONTRACT TO BURKHARDT CONSTRUCTION, INC., IN THE AMOUNT OF $49,950 AND ESTABLISHING A PRE-CONSTRUCTION PHASE BUDGET OF $85,000 FOR (CONSTRUCTION PROGRAM MANAGEMENT)CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE D-15 (D-6 AND D-7 PUMP STATION IMPROVEMENTS) AND AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT NECESSARY TO COMPLETE THIS PHASE OF SAID IMPROVEMENTS.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The pre-construction phase services contract is hereby awarded to Burkhardt Construction, Inc. for the amount of $49,950 and establishing a pre-construction phase budget of $85,000.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order on behalf of the Town of Palm Beach for (Construction Program Management) Construction Manager at Risk services with Burkhardt Construction, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the implementation of pre-construction phase services for the Accelerated Capital Improvement Program.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

_____	_____
Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	_____
	To be determined on 2/15/11, Town Council President Pro Tem
	_____
	, Town Council Member
	_____
ATTEST:	, Town Council Member
_____	_____
Cheryl Somers, Acting Town Clerk	, Town Council Member

BURKHARDT
CONSTRUCTION, INC.

Vincent G. Burkhardt
President

February 9, 2011

Mr. Michael Roach, P.E.
Town of Palm Beach
Public Works/Engineering Department
951 Old Okeechobee Road
West Palm Beach, FL 33401

RE: RFP No. 2011-09
Pump Station Construction D-15, D-6 and D-7 (RFP 2011-09)

Dear Mr. Roach:

Burkhardt Construction, Inc., acting as Construction Manager At Risk (CMAR), is pleased to provide this proposal for the Pre-Construction Services for the Pump Station Construction D-15, D-6 and D-7 (RFP 2011-09).

Task I
PRE-CONSTRUCTION PROGRESS MEETINGS

The scope includes the CMAR conducting weekly team progress meetings attended by CMAR, design professionals, Owner and others as requested. The CMAR shall provide agendas and produce meeting notes from each meeting documenting the issues of the project, assigning responsibility for issue resolution and tracking the timelines for issue resolution.

Estimated 10 meetings required.

TASK I - TOTAL LUMP SUM FEE $4,000.00

Task II
PRE-CONSTRUCTION SCHEDULING

The scope includes initial data collection with design professionals providing necessary permits required and timelines for application & securing all permits

Based on the provided information, CMAR will develop a master Pre-Construction phase bar chart schedule incorporating design development, permitting, plan review, guaranteed maximum price preparation, submittal review & approval, long lead item identification & procurement, informational meetings with the adjacent condominium associations/board of directors, marina manager, coordination with Town's program manager and project ground breaking.

1400 Alabama Avenue • West Palm Beach, Florida 33401 • (561) 659-1400 • Fax (561) 659-1402

The Pre-Construction schedule shall be presented to the Owner for review & comment and shall be updated monthly to track Pre-Construction progress.

TASK II – TOTAL LUMP SUM FEE $3,000.00

Task III
60% PLAN REVIEW/CONSTRUCTABILITY REVIEW

The scope includes review of the 60% plans as provided by Design Team. The 60% review shall report to the Owner as to any design criteria which may present considerable constructability challenges. This scope shall not include a complete cost estimate presentation.

TASK III – TOTAL LUMP SUM FEE $6,250.00

Task IV
GUARANTEED MAXIMUM PRICE (GMP) 90% Plans

The scope consists of CMAR preparing the guaranteed maximum price and the final construction budget based on the 90% construction documents provided by the design team. The GMP shall consist of a detailed line item quantity survey for all major items of work to be performed. The direct construction cost for all labor, equipment, material and subcontracts shall be assessed. The CMAR's general conditions shall be detailed as well as the construction phase fee. The GMP shall also include the CMAR's fee and the Owner's contingency. The aforementioned information shall be presented to the Owner along with all supporting documentation for review and approval. This agreed upon document shall become the basis of the construction services phase of the project and shall conclude the pre-construction services phase of the project.

TASK IV – TOTAL LUMP SUM FEE $24,200.00

TOTAL PRECONSTRUCTION SERVICES LUMP SUM FEE ALL TASKS I THROUGH IV:

$37,450.00

ALTERNATE TASK:

Should the Town desire to re-use and modify the existing pump station wet wells; services for investigation, design review and constructability review shall be billed at the attached hourly rates guaranteed not to exceed.

ALTERNATE TASK FEE NOT TO EXCEED $12,500.00

We have attached our current hourly rates for your use should additional pre-construction services be requested.

Thank you for the opportunity to submit this proposal for the Pump Station Construction D-15, D-6 and D-7. If you have any questions on this proposal, please contact us at (561) 659-1400.

Submitted by: Burkhardt Construction, Inc.

Signed by: Dennis E. Haynes Title: Vice President

Accepted by: Title: Date:

Upon your acceptance of this letter agreement Burkhardt Construction, Inc. shall begin work immediately. Please return one original for our files.

BURKHARDT
CONSTRUCTION, INC.

Town of Palm Beach
Pump Station Construction D-15, D-6 and D-7 (RFP 2011-09)

Hourly Rates For Additional Requested
Pre-Construction Services

Name	Position	Rate
Vincent G. Burkhardt	President	$275.00
Dennis E. Haynes	Vice President/Project Principal	$150.00
Sharon H. Burkhardt	Secretary/C.P.A.	$150.00
Marc R. Kleisley	Senior Project Manager/Estimator	$150.00
Vincent L. Burkhardt	Project Manager/Estimator	$100.00
Hemant Tank	Estimator/Cost Engineer	$75.00
Sarah B. Hoadley	Accounting Manager/M.B.A.	$90.00
Katy Pantaleone	Accounting	$70.00
Tara L. Haynes	Administrative Ass't/Secretarial	$50.00
Christopher Quennville	Construction Field Manager	$90.00

Hourly rates include all necessary supplies, transportation, communication overhead and profit.

1400 Alabama Avenue, Suite 20 • West Palm Beach, Florida 33401 • (561) 659-1400 • Fax (561) 659-1402

RFP NO. 2011-09
CM at Risk - Pump Station Construction - D-15, D-6 and D-7
Oral Presentations

SELECTION COMMITTEE RANKINGS

	Committee Member	Gail Coniglio	Paul Brazil	Eric Brown	Jay Boodheshwar	Total
	Company	Rating	Rating	Rating	Rating	Rating
1	Burkhardt Construction, Inc.	4.90	4.90	4.75	4.90	4.86
2	Hedrick Brothers Construction Co., Inc.	4.38	4.45	4.00	3.90	4.18
3	The Weitz Company	3.50	3.95	3.65	4.80	3.98
4	The Whiting-Turner Contracting Company	3.18	4.80	3.85	3.95	3.94
5	Wharton-Smith, Inc.	3.73	4.20	3.85	3.65	3.86

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 16-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Not to Exceed Pre-Construction Phase Budget of $25,000 for the Force Main Projects Within the Accelerated Capital Improvement Program.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated January 28, 2011, from H. Paul Brazil, Director of Public Works.
- Resolution No. 16-11

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Construction Manager at Risk Selection Committee Member Substitution and Project Incidental Costs
Resolution No. 16-11

Date: January 28, 2011

STAFF RECOMMENDATION

Staff recommends that Town Council appoint an alternate selection committee member to replace Mayor Gail Coniglio. In addition, staff recommends Council approval of Resolution 16-11 establishing a pre-construction phase budget of $25,000 be approved for incidental costs such as permitting and advertising.

GENERAL INFORMATION

During the January 11, 2011, Town Council meeting, the Construction Manager at Risk (CM at Risk) project delivery method for administering the Capital Improvement force main projects was approved. Within that selection committee approval was the former Public Works Committee Chairperson, Gail Coniglio, who has recently been elected Mayor of the Town of Palm Beach. Staff requests that the new Public Works Committee Chairperson be placed on the CM at Risk Contractor Selection Committee for the force main projects.

Also, in transitioning from the design phase to construction phase, there will be incidental costs such as Health Department permits and advertising for the construction phase services. These expenses are typical for all of our larger projects. Staff is recommending a not to exceed budget of $25,000. All unspent funds would be returned to the Accelerated Capital Improvement fund account. The requested funding is necessary to complete this portion of the project schedule.

FUNDING/FISCAL IMPACT

Funding for this Accelerated Capital Improvement Program project is fully contained within the Bond Proceeds Construction Fund.

PURCHASING REVIEW

The Purchasing Division has reviewed the information provided and has approved the content.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed this resolution and approved for legal form and sufficiency.

Attachments

cc: Jane Struder, Director of Finance
James Bowser, P.E., Town Engineer
Jeffrey Sanon, P.E., Project Engineer
Lynda Venne, Purchasing Agent
Selection Committee Members

RESOLUTION NO. 16-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING A NOT TO EXCEED PRE-CONSTRUCTION PHASE BUDGET OF $25,000 FOR THE FORCE MAIN PROJECTS WITHIN THE ACCELERATED CAPITAL IMPROVEMENT PROGRAM.

BE IT RESOLVED BY THE TOWN OF COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town Council hereby approves a not to exceed budget of $25,000 for the pre-construction phase of the Accelerated Capital Improvement Program Force Main Projects.

Section 2. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the implementation of pre-construction phase services for the Force Main Projects within the Accelerated Capital Improvement Program.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 18-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract Increase to D. B. Ecological Services, Inc. for Sea Turtle Nesting Monitoring Associated With the 2010-2011 Dune Restoration Project in Reaches 7 and 8, Establishing a New Contract Amount of $141,480 from $133,480.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum Dated February 4, 2011, from H. Paul Brazil, Director of Public Works.
- Resolution No. 18-11
- D. B. Ecological Quote

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Award a Contract Increase for Sea Turtle Nesting Monitoring
Resolution No. 18-11

Date: February 4, 2011

STAFF RECOMMENDATION

Town staff recommends that the Town Council approve Resolution Number 18-11, awarding an $8,000 increase of the contract to D.B. Ecological Services, Inc., from $133,480 to $141,480. The increase will pay for D. B. Ecological to monitor sea turtle nesting during dune construction activities beyond March 1, 2011, as required by the Florida Department of Environmental Protection (FDEP), in Reaches 7 and 8.

GENERAL INFORMATION

The special conditions within the Phipps Ocean Park Beach and Dune Restoration and Partial Nourishment (our ongoing beach project) allows for construction to continue into sea turtle nesting season if necessary, but we must be completed before May 1. Beginning on March 1st, a daily marine turtle nest survey of the nesting beach in the project area must be conducted between sunrise and 9 a.m. before starting work in that area for that day.

The current project schedule anticipates the Reach 7 portion of the project being completed in late February/early March and the Reach 8 portion extending into the month of April.

D.B. Ecological Services currently provides sea turtle monitoring for all Town project areas. Our ongoing dune construction project will require additional monitoring each morning before construction begins. Relocation of nests may also be necessary. Our existing contract does not include this work so a change order will be necessary.

FUNDING/FISCAL IMPACT

Sufficient funds exist in the Dune Restoration project contingency to cover the additional sea turtle nesting monitoring. The increase covers a daily rate of $100 per day and a not to exceed budget amount of $8,000.

Sea Turtle Nesting Monitoring related to the dune project is a component of the Project Worksheet approved by FEMA for reimbursement; therefore, the Town should expect a 75% reimbursement for monitoring in Reach 7. Any work in Reach 8 will be a Town expense.

PURCHASING REVIEW

The Purchasing Division has reviewed the information provided and has approved the content.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed this resolution and approved for legal form and sufficiency.

Attachments

HPB:rw

cc: Jane Struder, Finance Director
James M. Bowser, P.E., Town Engineer
Lynda Venne, Purchasing Director
Rob Weber, Coastal Coordinator

RESOLUTION NO. 18-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT INCREASE TO D. B. ECOLOGICAL SERVICES, INC. FOR SEA TURTLE NESTING MONITORING ASSOCIATED WITH THE 2010-2011 DUNE RESTORATION PROJECT IN REACHES 7 AND 8, ESTABLISHING A NEW CONTRACT AMOUNT OF $141,480 FROM $133,480.

BE IT RESOLVED BY THE TOWN OF COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town of Palm Beach Sealed Bid No. 2007-21 for Sea Turtle Monitoring was awarded to D.B. Ecological Services, Inc. for the bid amount of $133,480 for the 2011 Sea Turtle Nesting Season, through Resolution 137-10, on December 16, 2010.

Section 2. Additional Sea Turtle Monitoring, required by permit during construction of the Phipps Ocean Park Beach and Dune Restoration and Partial Beach Nourishment between March 1, 2011 and April 30, 2011, is hereby awarded to D.B. Ecological Services, Inc. for the not-to-exceed amount of $8,000.00, establishing a new contract amount of $141,480.

Section 3. The Town Manager is hereby authorized and directed to execute a change order to the contract on behalf of the Town of Palm Beach for the Sea Turtle Monitoring with D.B. Ecological Services, Inc.

Section 4. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the Sea Turtle Monitoring.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

D.B. Ecological Services, Inc.
1012 SW 7th St
Boca Raton, FL 33486
Phone # (561) 376-5502
Fax # (561) 393-0394

2/3/11

COST PROPOSAL FOR TOWN OF PALM BEACH FOR ADDITIONAL MONITORING SERVICES ASSOCIATED WITH DUNE CONSTRUCTION ACTIVITIES FOR MARCH 2011

The following is a cost proposal to provide the necessary personnel and equipment to perform the additional sea turtle nest relocations and nest marking activities required by permit for the dune construction project. Nest relocations and additional marking parameters are required in the Town of Palm Beach Permit to facilitate construction activities to occur beyond 1 March into the 2011 sea turtle nesting season.

Based upon a review of the online permit documents, nests that are located within the construction area and are determined by the marine turtle permit holder to be affected by the construction activities will be relocated to a suitable location outside the active construction limits.

Based upon this cost estimate it is anticipated that with relocation activities and additional nest marking there should be limited or no interruption of construction activities.

While it can take several hours to relocate certain species of sea turtle's nests, work can typically proceed throughout the construction area with the exception of the immediate relocation site until the relocation is completed.

The cost to provide the necessary additional personnel and services is $100 per day throughout the construction duration.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

North Ocean Boulevard Seawall - Authorization for Repairs and Plans for Permitting.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 4, 2011, from H. Paul Brazil, Director of Public Works.

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: North Ocean Boulevard Seawall Repairs

Date: February 4, 2011

STAFF RECOMMENDATION

Town Staff recommends that Town Council approve this approach for maintenance of the seawall and authorize the expenditure of up to $23,000 for repairs to the North Ocean Boulevard seawall opposite the Palm Beach Country Club. The Town Manager will eventually enter into a construction contract in accordance with the Town's Purchasing manual.

GENERAL INFORMATION

The Town is responsible for maintaining the North Ocean Boulevard seawall opposite the Palm Beach Country Club. We have previously installed limestone boulders ("Rip Rap") to secure the wall and extend its useful life. We have a planned project that includes installing additional steel sheets behind the existing wall and replacing the anchoring system.

A recent inspection of the Palm Beach Country Club Seawall revealed continued deterioration in several locations. One small sink hole has developed behind the wall. The Town met with a local contractor to review the wall. Cost to repair the areas where the gunite has spalled off and to repair several small holes in the wall is estimated at $23,000. These repairs should be completed while design and permitting for the replacement wall continue. Staff believes that repair of the eroded sections with a minor touch up of the spalled areas is sufficient until the replacement project is built.

Funding in the amount of $50,000 to begin permitting of the new wall is included in the FY 2011 budget. Staff is recommending that up to $23,000 of this money be diverted to the repair. Staff will return to Town Council with a proposal to begin the design of the new wall. Additional funding will requested in the FY 2012 budget to complete the permitting of the wall and to prepare plans and specifications.

FUNDING/FISCAL IMPACT

Cost for the repair work will not exceed $23,000. Sufficient funds exist in the Coastal Management program budget.

cc: Jane Struder, Finance Director
James Bowser, P.E., Town Engineer
Robert Weber, Coastal Coordinator
Steven Bielsky, Manager, Palm Beach Country Club

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Approval of Modified Directional Boring Pipe Impacts at Bradley Park and Lake Trail.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 4, 2011, from H. Paul Brazil, Director of Public Works.
- Letter from Cornerstone dated January 21, 2011.
- Email from Moss & Associates dated February 3, 2011.
- Bradley Park Pipe Staging Plan

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Bradley Park Directional Boring Alternatives

Date: February 4, 2011

STAFF RECOMMENDATION

Town staff recommends that Town Council approve a modification to the prior approval for an early start to construction in Bradley Park in connection with the subaqueous City of West Palm Beach water main and Town sewage force main projects. This approval is for an alternative construction method which is expected to have less impact upon the Town.

GENERAL INFORMATION

The City of West Palm Beach and the Town have signed an interlocal agreement to cooperatively construct a new 24 inch water main and a 24 inch sewage force main under the Lake Worth Lagoon from Bradley Park to Providencia Park in West Palm Beach. Town Council has previously granted approval to allow the contractor to set up the directional boring machine this Bradley Park in April. The operation of the boring machine would commence on May 1, 2011, and at times operate 24 hours a day with the operation likely lasting into August.

The low bid contractor for the project, Cornerstone Businesses Inc., has proposed an alternative work plan for Council's consideration. Cornerstone is asking that they be allowed to mobilize in Bradley Park as early as late February, deliver to the park 24 inch diameter HDPE pipe in late March / early April, heat fuse pipe in Bradley Park and assemble the pipe beginning on May 1. The contractor would lay the 24 inch diameter pipe in the park and extending north on Lake Trail. The contractor would then pressure test the pipe and, within a week, pull the pipe back to West Palm Beach. This would occur two times, once for the 24 inch water main and once for the 24 inch sewage force main. A copy of Cornerstone's letter of request is attached.

The advantages to this new plan is that the boring machine will be located in West Palm Beach. The noise, drilling mud and construction crew activity will be moved away from Bradley Park. Because of a different entry angle in West Palm Beach, the contractor will avoid a conflict with a 24 inch sewer main, thus reducing the cost of the project. The need to assemble the entire pipe prior to pull back is to allow the pipe to be pressure tested before being pulled under the Lake Worth Lagoon.

The use of Lake Trail would be from Bradley Park up to and just past Atlantic Avenue. The bike path closure is expected to last less than a week and occur on two occasions. The contractor will work with the adjacent property owners to allow access to the boat docks by constructing pedestrian walkovers. Bike Trail traffic will be detoured to Bradley Place.

The advantage of this alternative is a shorter duration of impact and less noise. The disadvantage is that a larger area will be impacted.

FUNDING/FISCAL IMPACT

There is an expected savings of $6,180 to the Town by avoiding the relocation of a City sewage line that would be in conflict with boring if said boring were to be from Bradley Park.

Attachments

cc: Eric Brown, P.E., Assistant Director of Public Works
James Bowser, P.E., Town Engineer
Doug Terry, Water Resources Manager
Jim Hubbard, Project Manager, Cornerstone Businesses, Inc.

CORNERSTONE BUSINESSES, INC.

January 21, 2011

Jim Bowser. P.E.
Town of Palm Beach
951 Okeechobee Rd.
West Palm Beach, FL 33401
Ref: Flagler Drive 24" Subaqueous Water Main Crossing

Mr. Bowser,

We are requesting an early start date to be approved in order to better ensure substantial completion of the subaqueous water main by July 31 for the above referenced project. With the understanding that major construction activity cannot occur during the Town's specified season, we are also requesting an alternative set up and pipe layout to be approved in order to facilitate this early start.

As detailed in the plans, the impacts of directional drilling activity to the Town and their residents would be the presence of the large directional drilling rig and other major equipment to be located at Bradley Park. However, an alternative to this set up would be to relocate this drilling equipment to the City's side of the waterway and minimize this impact and disturbances to the surrounding community because of the significantly less amount of large equipment needed at the exit pit. If this request is approved, portions of the designed project can be omitted thereby reducing the cost of the project. Specifically, the sanitary sewer main on Flagler Drive would no longer need to be relocated because of the different entry and exit angles of the pilot hole. Additionally, this alternate set up will also minimize the risk of a hydrofracture on the heavily trafficked Flagler Dr. as fluid pressures are greater approaching the exit of the bore.

The pipe layout is being requested to occur at Bradley Park and portions of the trail adjacent to the park. During a maximum of three weeks prior to the pull, this area would be utilized to fuse and stage the pipe. In this time period, portions of the trail could still remain open and the access to the docks will be retained by constructing pedestrian walkovers (please see attached). As discussed, we will drive guardrail posts in a number of areas for the pipe to bend around in an acceptable radius. This will also prevent the pipe from coming in contract with the trees during the fusing and staging operation.

In considering the relocation of the major equipment and the benefits to all agencies involved, we are asking for an approval to begin construction of the directional drilling portions of the water main in February. I appreciate your consideration in this matter.

Sincerely,

Jim Hubbard
Project Manager

3936 Paul S Buchman Hwy ◊ Zephyrhills, Fl. 33542

(813) 715-0808 Fax (813) 715-0910

To: <JBowser@TownofPalmBeach.com>
From: "Randy Jr. Spicer" <RSpicerjr@mossemail.com>
Date: 02/03/2011 04:00PM
Cc: "Guy Reese" <GReese@mossemail.com>, "Martin Gierlach" <mgierlach@mossemail.com>
Subject: Publix Contractor Work in Road Right of Way
(See attached file: Publix Palm Beach Utility Relocation Plan - Conduit Route and Pull Box locations.pdf)

Mr. Bowser:

As requested, we are providing the attached plan to graphically illustrate the approximate locations where the public utility work will encroach into the Road Right of Way. This new underground utility easement is necessary to facilitate the future store. Since this work requires a high level of coordination and phased scheduling with each public utility company, this portion of pre-store construction work must commence with urgency to meet the milestone commitments and expectations of the Town Council & residents. All work will be performed in strict compliance with the approved Working Hours and Town Ordinances.

The directional bore method will be used to install the multiple conduit raceways required for each public utility companies wire. This segment of work will be performed on Publix's property. Placement of (5) pull box locations will be located inside the Right of Way, however, each individual pull box location will not required more than 72 hrs to completely install.

A complete, 72 hr turnkey pull box installation (per location) is a follows:

Day 1 – demo sidewalk, install dewatering well points

Day 2 – excavation, set pull boxes, install sweeps

Day 3 – remove well points, backfill and pavement restoration

The directional bore is scheduled to start as soon as authorization is granted from the Town Council. This portion of the utility relocation easement is scheduled for a (4) four week duration.

Once the underground conduit is in place, Moss will work start the phased installation of each pull box location. This portion of work is scheduled for a (3) four week duration will respect to the 72 hr time frame at each pull box location.

The balance of our Work that is required prior to the store closing after the Easter holiday will involve each public utility company (FP&L, Gas Co., AT&T, Comcast). Moss & Associates, along with our client, Publix Super Markets, will work in concert to coordinate and schedule each utility companies work in a staggered sequence to best avoid congestion in the streets and interruption to the town residents. Work such as FPL

setting the new concrete poles will be scheduled so that the hoisting equipment sets up on the private property side instead of working from the Right of Way.

We understand the resident's sensitive nature to the "appearance" of construction work in Public Right of Ways. With respect to the overall project delivery, this 10-12 week pre-store construction activity is absolutely necessary to start to enable the timely delivery of the new Publix Super Market.

Please let me know if you need any further information.

Thanks.

Randy Jr. Spicer
Project Manager | **Moss & Associates**
o (954) 769-8228 | m (954) 410-2835 | f (954) 769-8657
2101 N. Andrews Ave., Ste. 300, Ft. Lauderdale, FL 33311

N
Atlantic Ave
Everglade Ave
Seminole Ave
Oleander Ave
GoogleEarth_Placemark
GoogleEarth_Placemark
Sunset Ave
Flagler Memori
© 2010 Europa Technologies
Royal Poinciana
© 2010 Google
Royal Poinciana Pla
Google
Imagery Date: 1/19/2009
1995
26°43'14.64" N 80°02'36.44" W elev 0 ft
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TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Worth Avenue Phase I Close-Out With Savings Overall and Change Order Approval for Architect Mark Marsh.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated Februay 4, 2011, from H. Paul Brazil, Director of Public Works.
- Letter from Mark Marsh, dated January 21, 2011.

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Worth Avenue Update

Date: February 4, 2011

STAFF RECOMMENDATION

Town staff recommends Town Council review the general information below and approve a change order to Bridges, Marsh & Associates in the amount of $34,276 for additional services provided during construction in 2010.

GENERAL INFORMATION

The construction of the Worth Avenue Streetscape and Infrastructure Improvements was completed by Burkhardt Construction in November 2010, ahead of schedule and under budget. The following information is provided as an update with regard to the project.

Construction contract status: The contract scope of work was completed along with change directives as identified and approved during the progress of the work. The only remaining work items include minor crack repair, sealing, and replacement of a few small sections of tabby concrete sidewalks. Retainage of contract funds in the amount of $36,000 was held pending resolution of those issues. The remainder of the retainage was released and paid. The contract is still open and available for accomplishment of the "Phase II" items mentioned below.

Phase II work items: A kick-off meeting with Town staff, design consultant, and stakeholders is scheduled for February 10 to identify supplemental work items that are desired by the owners/merchants. A process for evaluating, prioritizing, and estimating these items will be discussed at that meeting, to allow for the consideration and review of the proposed items by the hybrid committee and Town staff.

Remaining funds: The construction contract amount is $13,124,561.00 with $11,729,108.64 completed and earned to date (including the $36,000 retainage noted above). The remaining balance of $1,395,452.36 is available for either performing Phase II work items and/or for deductive change order to the contract. Remaining funds deducted from the construction contract will be returned to the Worth Avenue assessment project account, and can be used to retire debt or to pay annual debt service.

Consultant fees: During the course of the construction, there were change directives issued for scope revisions. Based on those changes, the design consultant (Bridges, Marsh & Associates) and their sub-consultants incurred additional work and expense. The total amount requested for the additional consultant effort is $34,276.00 and it is requested that the Town Council approve a change order for that amount to PO#901131. The consultant fees for the Phase II design services in 2011 was already approved in a prior Town Council meeting.

Maintenance contract: The maintenance contract for Worth Avenue was awarded to Lopez Group, who has been providing those services since December. Town staff and merchant/owner reps have met as needed to

review the level of maintenance being performed by Lopez Group, and the consensus was they have been doing a good job. Mulching of landscape beds and tree pits is occurring this month along with fertilization of the cocoanut palm trees. The maintenance of the "living wall" continues to be done by G-Sky (through Burkhardt Construction for the first year). The Garden Club of Palm Beach has generously donated $10,000 per year to assist in funding of this maintenance.

PURCHASING REVIEW

The Purchasing Division has reviewed the information provided and has approved the content.

FUNDING/FISCAL IMPACT

Funds are already available within the previously established accounts for those items noted above which have a fiscal impact.

Attachments

cc: Eric Brown, Assistant Director of Public Works
Ed Armstrong, Parks/Streets Supervisor
Mark Marsh, Bridges, Marsh & Assoc.
Dennis Haynes, Burkhardt Construction

21 January 2011

Mr. Paul Brazil, P.E.
Director
Town of Palm Beach Public Works
PO Box 2029
Palm Beach, FL 33480

RE: Worth Avenue Alterations and Renovations
P.O. #901131

Dear Paul,

We have now had the opportunity to complete a reconciliation regarding the Design Consultant fee on the above referenced project.

As a result of this reconciliation, the fee under P.O. #901131 will be exceeded, based on Additional Professional Services (PSA 2.3) provided under the Construction Administration Phase, during the April through November 2010 construction period.

These additional services resulted from major revisions to the scope of the Project, drawings and specifications, due to changes in the contract work approved by the Town and Owners, that were beyond the control of the Design Consultants.

Attached please find documentation describing the scope, time and cost impacts resulting from these revisions. (Change Directives 1-5). These are reflected in Burkhardt Construction Change Directives #9, #13, #14, #16, #17, #19, #20, #21, #25 & #28.

Bridges, Marsh & Associates have attempted to manage Consultant cost impacts within the original contract sum. However, even though certain Consultants (namely Kimley-Horn) were able to work within their original budget, others requires an increase due to the added scope or revisions.

We are therefore requesting an additional $34,276.00 (Thirty-Four Thousand Two Hundred Seventy-Six Dollars) to the contract amount as a result of these additional services.

It must also be clarified that any inconsistencies that occurred previously, relative to billing rates (letter dated 10 September 2010) have been accounted for and the above figure represents a net increase to the Contract with credit given through non-billable time to any previous overages.

BRIDGES, MARSH & ASSOC., INC.
chartered architects

EIGHTEEN VIA MIZNER • PALM BEACH, FLORIDA 33480 • 561 832 1533 • FAX: 561 832 1520

We sincerely apologize for this need for additional compensation, but completion of this very successful project was the focus of our efforts to complete it in a timely manner and minimize any impacts to the residents and businesses on Worth Avenue.

Kind regards

Yours sincerely,

BRIDGES, MARSH & ASSOCIATES, INC.

M. Mark Marsh, AIA

CHANGE DIRECTIVE #1 **Alternate Signage / Sidewalks** *CONSULTANT*	*ARCOM*	*MEETINGS*	*DESIGN*	*TOTAL HOURS*	*RATE*	*LINE TOTALS*
Architects:						
Principal (MM)	2	8	10	20	$200.00	$ 4,000
Project Manager (HT)	2	2	8.5	12.5	$85	$ 1,063
Landscape Architects:						
Principal (JS)						
Project Manager (BSV)						
CADD (RW/AR)						
TOTALS	**4**	**10**	**18.5**	**32.5**		**$ 5,063**

CHANGE DIRECTIVE #2 Hibiscus Fountain Redesign/ Clock Tower Revisions *CONSULTANT*	*MEETINGS*	*DESIGN*	*TOTAL HOURS*	*RATE*	*LINE TOTALS*
Architects:					
Principal (MM)	12	14	26	$200	$ 5,200
Project Manager (HT)	1	5	6	$85	$ 510
Landscape Architects:					
Principal (JS)	11.5	8	19.5	$190	$ 3,705
Project Manager (BSV)	11.5	31	42.5	$150	$ 6,375
CADD (RW/AR)		2.5	2.5	$80	$ 200
M/E/P Engineer					
Engineer					
TOTALS	**36**	**60.5**	**96.5**		**$ 15,990**

CHANGE DIRECTIVE #3 Alternate Tree Planting Hibiscus Plaza *CONSULTANT*	*MEETINGS*	*DESIGN*	*TOTAL HOURS*	*RATE*	*LINE TOTALS*
Architects:					
Principal (MM)	6	2	8	$200	$ 1,600
Project Manager (HT)	1		1	$85	$ 85
Landscape Architects:					
Principal (JS)/ (PM)	3.5	5.75	9.25	$190	$ 1,758
Principal (PM)	1	1	2	$150	$ 300
Project Manager (BSV)					
CADD (RW/AR)					
TOTALS	**11.5**	**8.75**	**20.25**		**$ 3,743**

CHANGE DIRECTIVE #4 Alternate Planting for 100 Block *CONSULTANT*	*MEETINGS*	*DESIGN*	*TOTAL HOURS*	*RATE*	*LINE TOTALS*
Architects:					
Principal (MM)	8		8	$200	$ 1,600
Project Manager (HT)	1		1	$85	$ 85
Landscape Architects:					
Principal (JS)		1.5	1.5	$190	$ 285
Project Manager (BSV)	4	14	18	$150	$ 2,700
CADD (RW/AR)					
TOTALS	**13**	**15.5**	**28.5**		**$ 4,670**

CHANGE DIRECTIVE #5 FP & L Work to Alleys - Offsite *CONSULTANT*	*MEETINGS*	*DESIGN*	*TOTAL HOURS*	*RATE*	*LINE TOTALS*
Engineers:					
Principal (JEP)	1		1	204.82	$ 205
Project Manager (KMS)	8	4	12	148.57	$ 1,783
Clerk (DC)	4.5		4.5	71.69	$ 323
Subcontractor (DB)					$ 2,500
TOTALS	**13.5**	**4**	**17.5**		**$ 4,810**

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Waiver of Construction Prohibition During Winter Months to Allow Pre-Construction Activities for Pendleton Avenue Project.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated January 28, 2011, from H. Paul Brazil, Director of Public Works.

TOWN OF PALM BEACH
Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Request for Waiver to Town Code for Work Within the Town's Right-of-Way During Winter Months

Date: January 28, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve C3TS, Inc. and their sub-consultant, The Wantman Group, Inc. to perform design phase related field services outside of the Town Code of Ordinances for construction dates. Also, staff requests that the Town Council authorize the Town Manager to allow similar activities on a case by case basis in the future.

GENERAL INFORMATION

On July 13, 2010, Town Council approved Resolution No. 62-10 for design work of sanitary sewer, drainage, and roadway improvements on Pendleton Avenue and Pendleton Lane. Construction is scheduled for summer 2011. In order to resolve potential utility conflicts it is necessary to perform "soft digs" (field verification of existing utilities) at specific locations along the roadway. The work will be completed within two days and the roadway will remain open at all times.

This request includes waivers of the following sections of the Town Code of Ordinances:

> Section 42-198 - prohibits operation of equipment or machinery during winter, Sundays and legal holidays (commencing on December 1 and ending May 1).
>
> Sections 42-226 through 229 - regulates noise, equipment operation, and work hours and the standard Town requirement to "stand down for the season."

Staff would like confirmation that it can grant approvals for a waiver to the Town Code of Ordinances Sections 42-198, 199, and 226 thru 229 for this type of activity as well as other design phase field services such as surveying. All tasks would be in support of completing the Capital Improvement Program as expeditiously as possible.

FUNDING/FISCAL IMPACT

This task is being funded within the Accelerated Capital Improvement Project and will not cause additional funds to be allocated.

cc: Doug Terry, Water Resources Division Manager
Jeffrey Sanon, P.E., Project Engineer
Allen Powery, Public Works Right of Way Inspector

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Approval of Budget Calendar for Preparation and Approval of the FY12 Budget.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated February 4, 2011, from Jane Struder, Finance Director
- Budget Calendar

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: Budget Calendar for FY12 Budget Process

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the proposed FY12 budget calendar.

GENERAL INFORMATION

The attached budget calendar for FY12 includes all significant deadlines and meetings that are planned for the budget process. These include both State mandated actions (e.g. the special Town Council meeting in June and public hearings in September) and the Town's self directed actions (e.g. the special Town Council meeting in April to review the Long Term Financial Plan). Items requiring Town Council action are shown in bold type on the calendar.

The dates for the public hearings in September are tentative and are subject to change based on the dates of the County and School Board public hearings. Significant dates during the budget process include:

April 6, 2011 – Review of Long Term Financial Plan and Budget Priorities for FY12.

June 16, 2011 – Special Town Council meeting to review Town staff's proposed FY12 budget.

September 13, 2011 at 5:01pm – First public hearing on tentative budget and proposed tax rate.

September 21, 2011 at 5:01pm – Second public hearing on budget and proposed tax rate.

Staff looks forward to working with the Mayor and Town Council on the FY12 budget.

Attachment
jls
cc: Department Directors
Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney

Proposed Budget Calendar

January

1 *Town Hall closed - New Year's Day*

11 &12 *Regular monthly Town Council meeting*

17 *Town Hall Closed - Martin Luther King, Jr. Day*

February

15 & 16 *Regular monthly Town Council meeting*

21 *Town Hall closed - President's Day*

March

8 & 9 *Regular monthly Town Council meeting*

11 *Finance to distribute FY12 Proposed Budget instructions and Capital improvement project requests to all departments*

25 *Submit initial CIP request forms to the Public Works Director & Finance*

28 *Capital Improvement Project requests reviewed by the Public Works Director with individual departments*

April

6 *Special Town Council meeting re: Long Term Financial Plan*

12&13 *Regular monthly Town Council meeting*

18 *Public Works Director forwards prioritized CIP requests to Finance Director*

18 *Departmental proposed budget requests due in Finance Department, Full Time Equivalent, Departmental Non-Ad Valorem Revenue estimates*

21 *First review of Information Systems and Recreation Enterprise Fund budgets*

22 *First review of Fire Rescue budget*

January 2011

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	**11**	**12**	13	14	15
16	**17**	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February 2011

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	**15**	**16**	17	18	19
20	**21**	22	23	24	25	26
27	28					

March 2011

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	**8**	**9**	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April 2011

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	**12**	**13**	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Proposed Budget Calendar

May

10 & 11 Regular monthly Town Council Meeting

13 First review of Police budget

19 First review of Planning/Zoning/Building, and Risk budgets Human Resources (including Health & OPEB)

20 First review of Public Works and Capital budgets

26 First review of Town Manager, Finance,& Town Clerk,

27 Budget Document pages sent to departments for updating

30 Town Hall closed - Memorial Day

June

1 Property Appraiser issues preliminary property values

14 & 15 Regular monthly Town Council Meeting

16 Special Town Council Meeting To Consider Staff's Proposed FY12 Budget

July

1 Notice from Property Appraiser of rolled back rate F.S.200.065(1) and Preliminary Certification of Taxable Value for 2009

4 Town Hall closed - Independence Day

12 & 13 Regular monthly Town Council meeting

August

Week of 8 Notice of Proposed Property Taxes is mailed from Palm Beach Property Appraiser to property owners

9 &10 Regular monthly Town Council meeting

May 2011

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	**10**	**11**	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	**30**	31				

June 2011

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	**14**	**15**	**16**	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2011

S	M	T	W	T	F	S
					1	2
3	**4**	5	6	7	8	9
10	11	**12**	**13**	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August 2011

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	**9**	**10**	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Proposed Budget Calendar

September

5 *Labor Day - Town Hall closed*

13 & 14 Regular monthly Town Council Meeting

13 5:01pm Town Council first public hearing to approve tentative budget and proposed tax rate for FY12

21 5:01pm Town Council second public hearing to adopt FY12 budget and tax rate

October

1 Resolution adopting final millage rate is forwarded to Property Appraiser and the Tax Collector

1 Complete Certificate of Compliance with Provisions of F.S. Chapter 200 to the Property Tax Administration Program, Department of Revenue

11 & 12 Regular monthly Town Council meeting

November

8 & 9 Regular monthly Town Council meeting

11 Veteran's Day - Town Hall closed

24 & 25 Thanksgiving Holidays - Town Hall closed

December

13 & 14 Regular monthly Town Council meeting

23 & 26 Town Hall closed - Christmas holiday

30 New Year's Eve - Town Hall closed

September 2011

S	M	T	W	T	F	S
				1	2	3
4	**5**	6	7	8	9	10
11	12	**13**	**14**	15	16	17
18	19	20	**21**	22	23	24
25	26	27	28	29	30	

October 2011

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	**11**	**12**	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November 2011

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	**8**	**9**	10	**11**	12
13	14	15	16	17	18	19
20	21	22	23	**24**	**25**	26
27	28	29	30			

December 2011

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	**13**	**14**	15	16	17
18	19	20	21	22	**23**	24
25	**26**	27	28	**29**	**30**	**31**

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Approval of Selection Committee Substitution for Force Main CM-at-Risk Contract.

THE SUBSTANCE OF THIS ITEM HAS BEEN ADDRESSED PREVIOUSLY IN THE COVER MEMORANDUM FOR RESOLUTION NO. 16-11. PLEASE DISREGARD THIS SEPARATE ITEM SINCE IT IS REPETITIVE OF THAT EARLIER ITEM.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- NONE

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Approval of Centennial Related Requests from the Greater South County Road Association.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated February 7, 2011, from Jay Boodheshwar, Director of Recreation and Special Projects
- Email Dated February 2, 2011, from Patricia Sans, President of the GSCRA

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Request from the Greater South County Road Association

Date: February 7, 2011

STAFF RECOMMENDATION

Staff recommends that Town Council approve the revised request from the Greater South County Road Association (GSCRA), modifying their plans to a previously approved request for the temporary placement of circa 1911 street signs along Royal Poinciana Way and South County Road below the existing street signs.

GENERAL INFORMATION

The Greater South County Road Association had previously requested and received approval from Town Council on October 12, 2010, to place temporary street signs along Royal Poinciana Way and South County Road in honor of the Town's Centennial. The approved proposal allowed Royal Poinciana Way to be ceremonially renamed as "*Main Street*" and South County Road as "*Palm Beach Avenue*", consistent with their circa 1911 names. The approved request involves the placement of temporary signs just below the existing street signage along the two streets in question.

To allow for the development of a more complete marketing plan, the GSCRA would like to extend the timeframe for which the signs will be in place. GSCRA has requested they be allowed to install the signs on March 19, 2011, and removed shortly after the Town's actual centennial, April 17, 2011. The original time frame was for them to be unveiled the weekend of April 9, 2011, and remain in place until shortly after the Town's Centennial anniversary on April 17, 2011.

Please note that GSCRA will also complete a special event permit application and seek the appropriate approvals to host a kick-off event related to the ceremonial sign project, which will include the use of Memorial Park.

SPECIAL CONSIDERATIONS

This request has been reviewed and approved by the Centennial Commission as an appropriate and fitting activity to honor the Town's Centennial.

cc: Paul Brazil, Director of Public Works
Kirk Blouin, Chief of Police and Acting Fire-Rescue Chief
John Page, Director of Planning, Zoning, and Building
Patti Sans, GSCRA President
Centennial Commission File

Feb Council Mtg
Sans, Patricia (PALM BEACH, FL)
02/02/2011 05:11 PM
To:
JBoodheshwar
Cc:
Peter Elwell
Hide Details
From: "Sans, Patricia (PALM BEACH, FL)" <patricia_sans@ml.com>

To: JBoodheshwar@townofpalmbeach.com

Cc: Peter Elwell <pelwell@townofpalmbeach.com>

History: This message has been replied to.

Jay

As we discussed at the Centennial Commission meeting today, I would like to request a consent item added to the February Council agenda regarding the GSCRA/Royal Poinciana Centennial event surrounding changing the street names.

First we would like to request an change of dates . Instead of April 9-17 (as already approved by Council), we would like March 19 to April 17. This would allow us to create a more complete marketing plan for the business owners and shops.

Second we will have a kickoff event on March 19th which would involve starting on Royal Poinciana (Main Street) from 12-2 and moving to S County Road (Palm Beach Ave) from 2-4 having Jim Ponce giving a historical tour of each avenue and a period clothing contest. The Royal Poinciana event will be held at either Via Testa's or the Paramount. Both locations have already agreed. The S County Road event would be held at Memorial Fountain and I will obtain all the necessary approvals and permits as the Town requires. Worth Avenue will probably also join us on March 19th with an event of their own, however I don't know what that will be at this time.

Thank you always for all your help. Let me know if there is any additional information I can provide.

Patti Sans

President GSCRA

Patti

Patricia L. Sans, CFM
Vice President
Financial Advisor
Merrill Lynch Private Client Group
249 Royal Palm Way, Palm Beach FL 33480
561-650-7357 / 800-374-6820
561-327-6818 FAX

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TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Consent - Other

Agenda Title

Approval of Publix Use of Right-of-Way During Winter Months for Utility Relocation and Other Pre-Construction Activities.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 4, 2011, from H. Paul Brazil, Director of Public Works.
- Publix Utility Relocate Plan

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Publix Use of Right-of-Way During Winter Months

Date: February 4, 2011

STAFF RECOMMENDATION

Town Staff recommends that Town Council approve work in the road right of way prior to May 1, 2011, in connection with the installation of underground utilities to allow the reconstruction of a new Publix super market. This work will occur over a 6 to 8 week period prior to the closing of the existing Publix store shortly after Easter.

GENERAL INFORMATION

The Publix Supermarket reconstruction has obtained all of its' approvals and is in the process of obtaining the necessary permits to construct the new store. Publix is planning to close the existing store shortly after Easter and begin the demolition process.

Numerous meetings have been held between Publix, Publix's consultants, contractors, and Town staff regarding the utility work needed to be done prior to the store's demolition and commencement of construction of the new store. Utility lines that exist along the north side of the existing building need to be relocated away from the new store. This utility work has been scheduled to begin in mid to late February. The first phase is to place directional boring equipment on Publix property to install conduits for Florida Power & Light, Comcast Cable and AT&T. A new gas main will also be installed by directional boring.

The installation of the utility conduits and gas main will take approximately 4 to 6 weeks. After this work is complete, junction boxes will be installed. This work is expected to take place at five (5) locations and take three days at each location over a three week period. This will entail excavation of a section of sidewalk in the right-of-way, installing well points (dewatering system), excavation down to the conduits, installing new conduit and junction box, removing the well points, backfilling and restoring the sidewalk. A map that illustrates these five (5) locations is attached.

After the conduits are in and pull boxes installed, the utility companies can come in and pull their new wires. Some excavations in the mid block area of Bradley Place right-of-way (between Sunrise Avenue and Sunset Avenue) will be needed to connect to existing facilities. Two lanes of traffic can be maintained throughout this work.

FPL will also need to set new concrete poles. FPL has been asked to locate their trucks on Publix property and to not impact the right-of-way. The exact timing to allow abandonment of the existing utilities is not known. Publix, their consultants and utility companies understand the need to minimize the impact to the public during this work and will do so. The work will cause sidewalk closures requiring pedestrians to use sidewalks on the other side of the street. Work in Bradley Place, while impacting the roadway, will not prevent two lanes of traffic from being maintained.

Publix's contractors have begun to mobilize to the jobsite. Directional boring will not commence until Town Council has heard this application for a waiver of the Town Code of Ordinances. A copy of this agenda item is being sent to the managers of the residential buildings and commercial establishments surrounding the Publix site.

The proposed schedule is consistent with previous Town Council approvals. The only new request is to allow impacts to the adjacent sidewalks. The duration of those impacts are beyond staff's authority to approve, so we are requesting and recommending Town Council approval of this request.

Attachment

cc: James Bowser, P.E., Town Engineer
Martin Gauthier, P.E., Project Engineer
Allen Powery, Right of Way Inspector

Note: FPL will be setting new concrete poles from private property side.

UTILITY COMPANIES

FLORIDA POWER & LIGHT COMPANY
MR. BILL THOMAS
810 CHARLOTTE AVENUE
WEST PALM BEACH, FLORIDA 33401
PHONE : (561) 615-1528
E-MAIL: w.g.thomas@fpl.com

FLORIDA PUBLIC UTILITIES COMPANY
MR. BILL MCCOLDRICK
401 SOUTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
PHONE : (561) 838-1717
E-MAIL: bmccoldrick@fpuc.com

COMCAST CABLE
MR. AARON NEELY
7201 NORTH FEDERAL HIGHWAY
BOCA RATON, FLORIDA 33487
PHONE : (561) 454-5844
E-MAIL: aaron_neely@cable.comcast.com

AT&T
MR. ROBERT LOWEN
2021 SOUTH MILITARY TRAIL
WEST PALM BEACH, FLORIDA 33415
PHONE : (561) 357-6615
E-MAIL: robert.lowen@att.com

TOWN OF PALM BEACH
MR. JAMES BOWSER
951 OLD DIXIE/FREE ROAD, SUITE A
WEST PALM BEACH, FLORIDA 33401
PHONE : (561) 838-5440
E-MAIL: jbowser@townofpalmbeach.com

CITY OF WEST PALM BEACH
MR. MANUEL GONZALEZ
401 CLEMATIS STREET, 4th FLOOR
WEST PALM BEACH, FLORIDA 33401
PHONE : (561) 494-1388
E-MAIL: mgonzalez@wpb.org

UTILITY DEMOLITION NOTES

1. THE CONTRACTOR SHALL VERIFY LOCATION OF ALL UTILITY SERVICE LINES PRIOR TO START OF CONSTRUCTION AND DETERMINE THE REQUIREMENTS FOR THEIR PROTECTION.
2. THE CONTRACTOR SHALL ARRANGE FOR THE PROPER DISCONNECTION AND CAPPING OF ALL UTILITIES BY THE APPROPRIATE CERTIFIED TECHNICIAN.
3. THE CONTRACTOR SHALL CONTACT ALL UTILITY COMPANIES AND OWNER PRIOR TO DEMOLISHING ANY EXISTING UTILITIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE TO PROTECT ALL UTILITIES DESIGNATED TO REMAIN AND TO REPAIR ANY DAMAGED UTILITIES.

NOTE: ALL PROPOSED UTILITIES MUST BE RE-ROUTED AND LIVE PRIOR TO DISCONNECTION OF EXISTING UTILITIES.

UTILITY RELOCATION PLAN

SCALE: 1" = 20'

EASEMENTS TO BE VACATED/RELEASED

1. BOUNDARY RESURVEY IN DEED RECORDED IN DEED BOOK 100, PAGE 446 (LOTS 58 TO 70, SUNRISE ADDITION - AFFECTS PROPERTY EXPERIENCE OWNER AND PROPERTY TO BE ACQUIRED)
2. BOUNDARY RESURVEY IN DEED RECORDED IN DEED BOOK 208, PAGE 22 (LOTS 71 TO 74, SUNRISE ADDITION - AFFECTS PROPERTY TO BE ACQUIRED)
3. EASEMENT RECORDED IN DEED BOOK 9, PAGE 292, AS AMENDED IN DEED BOOK 174, PAGE 430 (LOT 154 TO 161 OF FLORAL PARK - AFFECTS PROPERTY TO BE ACQUIRED)
4. EASEMENT RECORDED IN DEED BOOK 15, PAGE 141, AS AMENDED IN DEED BOOK 104, PAGE 430 (LOTS 180 TO 201 OF FLORAL PARK - AFFECTS PROPERTY OWNERS EXPENSE AND PROPERTY TO BE ACQUIRED)
5. EASEMENT RECORDED IN DEED BOOK 82, PAGE 148, AS AMENDED IN DEED BOOK 104, PAGE 430 (LOTS 180 TO 201 OF FLORAL PARK - AFFECTS PROPERTY OWNERS EXPENSE AND PROPERTY TO BE ACQUIRED)
6. EASEMENT RECORDED IN DEED BOOK 82, PAGE 148, AS AMENDED IN DEED BOOK 104, PAGE 430 (LOTS 180 TO 201 OF FLORAL PARK - AFFECTS PROPERTY OWNERS EXPENSE AND PROPERTY TO BE ACQUIRED)
7. EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 5438, PAGE 1848 (LOTS 57 TO 61, SUNRISE ADDITION AND LOTS 214 AND 215, FLORAL PARK - AFFECTS PROPERTY OWNERS EXPENSE)

WITH RESPECT TO THE EASEMENTS LISTED IN 1 THROUGH 6, WE WILL NEED RELEASES FROM THE FOLLOWING:

COMCAST OF FLORIDA/GEORGIA, LLC
BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T FLORIDA
FLORIDA PUBLIC UTILITIES COMPANY
FLORIDA POWER & LIGHT COMPANY
CITY OF WEST PALM BEACH
TOWN OF PALM BEACH

WITH RESPECT TO THE EASEMENTS LISTED IN 7, WE WILL NEED RELEASES FROM THE FOLLOWING:

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FLORIDA PUBLIC UTILITIES COMPANY
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NOTE: SECTION SHOWN IS PROPOSED FUTURE CONDITION.

SECTION A-A

SCALE: 1/2" = 1'-0"

NOTE: SECTION B-B IS COMBINATION OF EXISTING AND PROPOSED FUTURE CONDITIONS. PURPOSE OF THIS SECTION IS TO ILLUSTRATE LOCATION OF BUILDING WITH RESPECT TO PROPOSED UTILITY LOCATIONS.

SECTION B-B

SCALE: 1/2" = 1'-0"

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192

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Board/Commission Annual Report

Agenda Title

Investment Advisory Committee
Dr. Michael Andrews, Chairman
Jane Struder, Finance Director

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated February 3, 2011, from Dr. Michael Andrews, Chairman of Investment Advisory Committee
- Annual Report Attachments

Town of Palm Beach
Investment Advisory Committee

To: Mayor and Town Council

From: Dr. Michael Andrews, Chairman
Investment Advisory Committee

Date: February 3, 2011

Subject: Annual Report to Mayor and Town Council

On behalf of the Investment Advisory Committee, I am pleased to provide the following report on the current status of the investments and actions taken during the past year by the Investment Advisory Committee.

The Investment Advisory Committee was created to review the Town's current investment policy and make recommendations to improve and diversify investment returns for the Town's surplus funds. In 2007, the Committee was also charged with the task of overseeing the Town's OPEB trust investments.

Surplus Fund Investments
The Town's surplus funds are managed by PFM Asset Management and the Florida League of Cities Investment Trust.

PFM Asset Management
The Town's total investment with PFM represents approximately 54% of the total portfolio. A report is attached showing the details of the PFM portfolio as of December 31, 2010.

During 2010, the Committee allocated the bond proceeds from the 2010 Revenue Bonds to PFM for investment. As of December 31, 2010, $39.5 million is invested with PFM from the proceeds of the 2010 Revenue Bonds.

PFM worked with the Committee to improve the Town's Investment Policy for surplus funds. The revised policy was adopted in March, 2010 and amended in July 2010 to increase the limit for intergovernmental investment pools from 25% to 40%.

Florida League of Cities Bond Funds
The balance of the Town investments ($38.2 million) are with the Florida League of Cities Investment Trust 1 – 3 year ($22.6 million) and intermediate bond funds ($15.6 million) (FMIvT). These investments represent 46% of the surplus funds portfolio. The investment is currently over the limit for intergovernmental investment pools, but will return to levels below the limit as ad valorem tax receipts are received.

The FMIvT 1-3 year fund has returned 1.97% and the Intermediate fund returned 4.81% for the one year period ended December 31, 2010. Attached are reports with return information through December 31, 2010.

Health Insurance (OPEB) Trust
The Committee oversees the investment of the assets of the Health Insurance (OPEB) Trust. Initial deposit into the trust was $16,000,000. During 2010, an additional $1,500,000 was invested in the trust. The Investment Policy for the OPEB trust was modified in March, 2010. The amendments included modifications to the asset allocation and added prohibitions for investments held in Sudan and Iran.

The updated asset classes and policy target ranges for the Health Insurance Trust are shown below:

	Asset Class		Target	Range	Benchmark
Return Enhancement	Domestic Equity	*U.S. All Cap*	27.5	22.5-32.5	Russell 3000
	Non U.S. Equity	*International*	17.5	15-20*	MSCI AC World ex. US
	Alternative Strategies	*Directional Hedge*	10.0	7.5-10	HFRI FOF Strategic/
	* FL statues limit investment in foreign securities (equity, fixed include, and other) to 25%. Unconstrained, the target allocation to equities would be 22.5% Domestic and 22.5% International				
	Asset Class		**Target**	**Range**	**Benchmark**
Risk Reduction	Alternative Strategies	*Absolute Return*	10.0	7.5-10	HFRI FOF Conservative
	Fixed Income	*Multi-Strategy*	10.0	7.5-10	Barclays Capital Aggregate
		Convertibles	10.0	7.5-10	BOA Conv. Bond US IG
	Real Assets	*Marketable Real Assets*	15.0	10-20	Custom Index

The fund added two new money managers during 2010: The PIMCO Commodity Real Return Strategy Institutional Fund and the Vanguard Energy Admiral Fund. The current money managers and investment benchmarks are as follows:

Manager	Investment Benchmark
Fidelity Spartan Total Market Index	Wilshire 5000 Index
Sound Shore Fund	Russell Midcap Value Index
Brandywine Fund	Russell 3000 Growth Index
Artio International Equity	MSCI AC World x US Index
Dodge & Cox International Stock Fund	MSCI EAFE Net Index
Forester Offshore, Ltd.	HFRI Fund-of-Funds Strategic Index
Archstone Market Neutral, Ltd.	HFRI Fund-of-Funds Conservative Index
PIMCO Total Ret II Instl Fund	BC Aggregate Index
Income Research Convertibles	BOA Convertible Bond US Inv. Gr. Index
Guggenheim PLUS II L.P.	70% NCREIF Index/30% NA REIT Index
Vanguard Inflation Protected Sec Fund	BC US Treasury Inflation Notes Index
PIMCO Commodity Real Return Str.	DJ-UBS Commodity Index
Vanguard Energy Admiral Fund	Spliced Energy Index
Government Stif 15	Citigroup Treasury Bill 3 Month Index

Attached is a summary of the investments in the Health Insurance (OPEB) Trust and the quarterly returns as of December 31, 2010. For the one year period ending December 31, 2010 the fund gained 12.7%.

General Information

The current members of the Investment Advisory Committee include:

Name:	Term Expires
Dr. Michael Andrews, Chairman	May 2011
William John Mikus	May 2012
Bernard R. Panfel	May 2012
Benton P. Bohannon	May 2011
Heinz Gundlach	May 2011

During the past 12 months the committee has held 4 meetings.

The next meeting of the Committee is scheduled for Friday, February 11, 2011. PFM Capital Management and Prime Buchholz will be in attendance to discuss the investment policies and performance through December 31, 2010.

Town of Palm Beach, Florida

Investment Performance Review
Quarter Ended December 31, 2010

Investment Advisors

Steven Alexander, CTP, CGFO, Managing Director
Mel Hamilton, Senior Managing Consultant
David Jang, CTP, Senior Managing Consultant
Gregg Manjerovic, CFA, Portfolio Manager
Rebecca Dole, CTP, Consultant

PFM Asset Management LLC

300 S. Orange Avenue, Suite 1170
Orlando, FL 32801
(407) 648-2208
(407) 648-1323 fax

One Keystone Plaza, Suite 300
North Front & Market Streets
Harrisburg, PA 17101-2044
717-232-2723
717-233-6073 fax

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Section B Investment Portfolio (Actively Managed) Executive Summary & Performance
Section C Bond Proceed Portfolios Performance
Section D Short Term Portfolio Performance
Section E CIP Fund Performance
Section F Worth Avenue Fund Performance
Section G Asset Allocation Chart

Tab III. December 31, 2010 PFM Month-End Statement
PFM Funds December 31, 2010 Month-End Statement

This material is based on information obtained from sources generally believed to be reliable and available to the public, however PFM Asset Management LLC cannot guarantee its accuracy, completeness or suitability. This material is for general information purposes only and is not intended to provide specific advice or recommendation. The information contained in this report is not an offer to purchase or sell any securities.

A sharp mid-quarter interest rate reversal drove intermediate- and long-term interest rates higher, ending a seven-month trend of lower rates. As a result longer-duration fixed income portfolios posted negative returns for the fourth quarter, but over the full year they out-performed cash investments by significant margins. In the quarter, corporate and Federal Agency securities outperformed comparable U.S. Treasuries and had a positive effect on accounts that held these investments.

The market-reversal followed the early November announcement by the Federal Reserve of a plan to purchase up to $600 billion of U.S. Treasury securities through June 2011 via a second round of Quantitative Easing ("QE2"). Quantitative easing is a form of monetary policy in which a central bank attempts to keep yields low by creating money to purchase fixed income securities, thereby decreasing the supply of such securities.

In the weeks leading up to the Federal Reserve's decision to implement QE2, investors began aggressively purchasing U.S. Treasuries in an attempt to front-run the announcement, causing U.S. Treasury prices to increase sharply. Following the Fed's official announcement of QE2, yields across all sectors (corporate, municipal, U.S. Treasury, and Federal Agency) actually ***increased*** due to a combination of positive economic data and increased expectations for growth and future inflation.

U.S. interest rate movements were paralleled in Europe where the European Central Bank (ECB) acted to alleviate sovereign debt concerns by purchasing Greek, Irish, and Portuguese bonds in addition to other euro-region government and corporate bonds. Since the program's inception in May 2010, the ECB purchased over €72.5 billion ($95.5 billion) of European sovereign debt. Quarter-over-quarter, the yield on 10-year German Bunds increased by over 65 basis points while yields on 10-year bonds issued by the French government increased by 64 basis points. Concerns over possible default by Ireland from earlier in the quarter dissipated after Ireland accepted an €85 billion ($112 billion) bailout package from the European Union and International Monetary Fund. Such actions combined to boost global investor optimism and push interest rates higher.

Interest Rates and Returns

Intra-quarter volatility was high as 2-year U.S. Treasuries hit a record low of 0.33% on November 12 before peaking to 0.73% on December 29 and ending the quarter at 0.59%. The 17 basis point increase is the greatest quarter-over-quarter change in a year. As illustrated in the following table, yields on intermediate- and long-term U.S. Treasuries also increased. Short-term rates remained anchored to the Federal Funds target range of 0.00% to 0.25%.

Summary of U.S. Treasury Security Yields

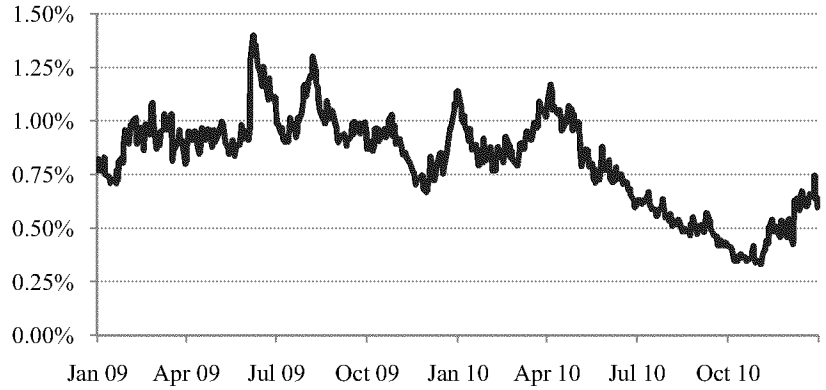
Date	3M	6M	1Y	2Y	3Y	5Y	10Y
December 31, 2010	0.12%	0.18%	0.26%	0.59%	0.99%	2.01%	3.29%
September 30, 2010	0.15%	0.19%	0.25%	0.42%	0.63%	1.26%	2.51%
Change over Quarter	-0.03%	-0.01%	0.01%	0.17%	0.36%	0.75%	0.78%
December 31, 2009	0.05%	0.19%	0.44%	1.14%	1.68%	2.68%	3.84%
Change over Year	0.07%	-0.01%	-0.18%	-0.55%	-0.69%	-0.67%	-0.55%

Source data: Bloomberg

As illustrated in the following chart, even with the back-up, 2-year U.S. Treasury yields remain below year-to-date highs set last January and April but have increased significantly since hitting record lows in November of 2010.

2-Year U.S. Treasury Note Yield

January 1, 2009 through December 31, 2010

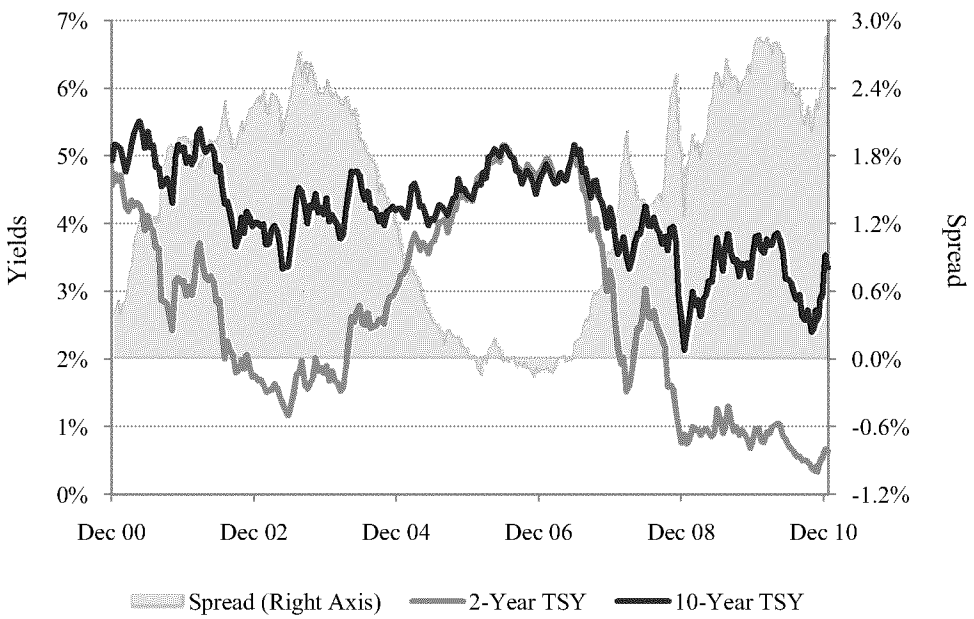


Source data: Bloomberg

The yield on 2-year U.S. Treasury notes, which is influenced by overnight rates, increased less than 10-year U.S. Treasury notes, which is more

affected by inflation and growth expectations. As illustrated in the chart below, the steepness of the U.S. Treasury yield curve, measured as the spread between 2- and 10-year U.S. Treasuries, reached record highs in December 2010. As of December 31, the spread was 270 basis points. A steeper yield curve generally signals that the pace of economic growth and/or future inflation will increase.

U.S. Treasury Yields and Yield Curve Steepness
December 2000 to December 2010

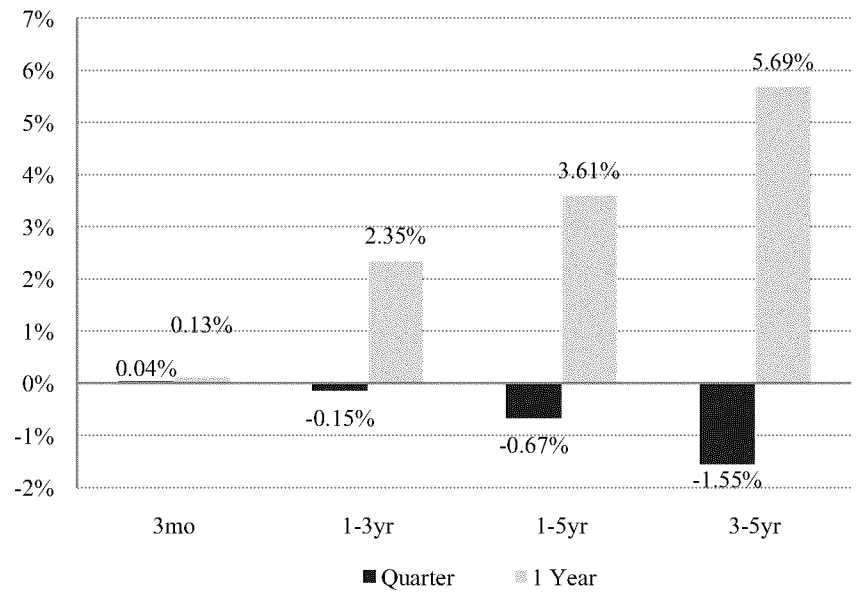


Source data: Bloomberg

In 2010, portfolios with longer durations outperformed shorter portfolios as a result of declining interest rates. Even with negative returns for the fourth quarter, 1 to 3-year U.S. Treasuries returned 2.35% for the year, which is significantly above bank deposits and money market funds with yields near zero.

Portfolios with longer durations have more price sensitivity to changes in interest rates than do shorter duration portfolios; thus the 3- to 5-year U.S. Treasury benchmark returned -1.55% in the quarter (-6.01% annualized) and 5.69% for the year. The duration of the 3- to 5-year U.S. Treasury benchmark was 3.80 years, more than twice that of the 1- to 3-year U.S. Treasury benchmark with a duration of 1.85 years.

Total Returns of Merrill Lynch U.S. Treasury Indices
Quarterly and 12-Month Total Return as of December 31, 2010



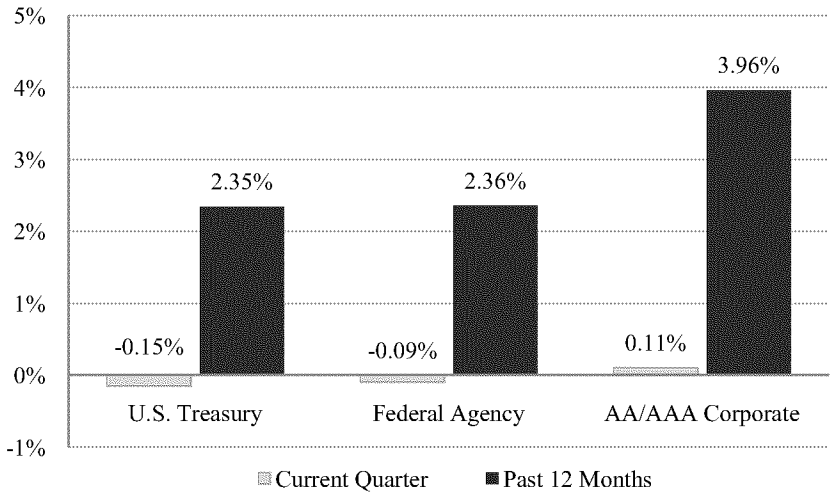
Source data: Bank of America Merrill Lynch; Bloomberg

Federal Agency and corporate securities out-performed comparable Treasuries. Spreads between U.S. Treasuries and Federal Agencies generally widened for longer maturities, but remained narrow by historical standards. The 10-year average spread between 2-year U.S Treasuries and Federal Agencies has been 0.35%, while they are currently at 0.15%. Spreads on 10-year obligations have historically traded at 0.50% and they are currently at 0.30%.

Spreads between U.S. Treasuries and corporate securities remained generally unchanged on the short end of the curve and slightly tightened on the long end of the curve. As shown in the chart on the next page, on a duration-adjusted basis, corporate benchmarks outperformed both Federal

Agency and U.S. Treasury benchmarks as a result of the higher income generated by corporate securities.

Duration Adjusted Returns of Merrill Lynch 1-3 Year Indices
Quarterly and 12-Month Total Return as of December 31, 2010



Source data: Bank of America Merrill Lynch; Bloomberg
Duration-adjusted return incorporates an adjustment to the market value return (but not the income return) of each benchmark to account for their varied durations, making it easier for investors to assess the relative risk and return of benchmarks of different lengths.

Improving credit and stable spreads led us generally to increase corporate holdings to take advantage of the incremental yield offered on highly-rated issuers. We will remain cautious with regard to issuer concentration due to continued expectations of high volatility and uncertainty surrounding the pace of economic recovery, which may impact credit spreads.

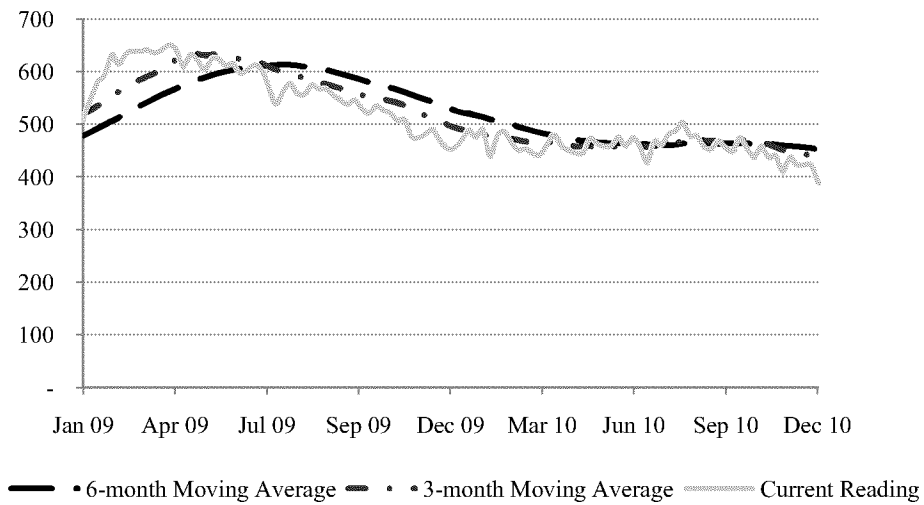
Economic Outlook

Economic data indicated some signs of improvement in the fourth quarter. GDP appeared to accelerate towards the end of the year.

The housing sector remained weak and continues to be a drag on the economy. Housing starts remained at depressed levels throughout the quarter and new home sales remain well below 15-year historical averages. The Case-Shiller Home-Price Index continued to show falling home prices, and building permits remained disappointing throughout the quarter.

While the unemployment rate remains elevated, there have been some positive developments in the labor market. December's initial jobless claims number of 388,000 was the lowest level since July 2008, while both the 3- and 6-month moving averages for initial jobless claims appear to show a downward trend from mid-2010 plateaus as illustrated in the accompanying chart. Continuing jobless claims also demonstrate a similar downward trend.

Initial Jobless Claims, Thousands
Current vs. 3-Month Moving Average vs. 6-Month Moving Average
January 1, 2009 to December 31, 2010



Source data: Bloomberg

However, the consumer remains strained as personal income and personal spending showed only marginal improvements in the fourth quarter. For the year, over 1.5 million Americans filed for personal bankruptcy, which represents a 9% increase from 2009.

Economists generally expect that the passing of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

in December will give the economy a boost over the next year. Included in the legislation was an extension of the Bush-era tax cuts and reduction of the FICA payroll tax, both of which are designed to spur growth via additional consumer spending. The bill also included an extension of federal unemployment benefits. The fiscal impact is about equal to that of the American Recovery and Reinvestment Act, though the emphasis is on boosting consumer spending, whereas the first stimulus program contained large federal construction and state and local government aid programs.

The pace of manufacturing activity continued to accelerate as evidenced by strong Philadelphia Fed and ISM Manufacturing numbers. Capacity utilization, which measures the relationship between actual output and potential output, continued to increase but remains significantly below pre-financial crisis levels.

Gold reached record highs in December and finished up 29.67% for the year, while oil traded above $91 per barrel for the first time since October 2008. The S&P 500 reached 2-year highs in December and ended the year up 15.06%.

Investment Strategy

With the prospect for higher rates ahead, investors are faced with the choice of keeping money in cash for a future chance to invest at higher rates or investing now to take advantage of the positively sloped yield curve. Our view is that short-term rates will remain low for the foreseeable future as the Fed keeps its easy money bias in place, and that this presents an opportunity for a return that exceeds the near-zero rate on cash. The economic recovery will take some time to accelerate to the point where unemployment falls to acceptable levels and/or inflation takes hold. Meanwhile we plan to continue to take advantage of the sharply-sloped yield curve. We also expect to continue to add corporate exposure where permitted to take advantage of incremental yield versus U.S. Treasuries. We remain cautious in executing this strategy because we recognize that with rates not far from historic lows there is more room for them to widen than narrow from here.

Executive Summary

PORTFOLIO STRATEGY

- The Town's Investment, Short Term and the CIP Series 2010A portfolios are of high credit quality and maintain adequate liquidity. The portfolios are invested entirely in Federal Agency, U.S. Treasury, and Commercial Paper securities. The securities are allocated among high quality issuers rated AAA, A-1+ and A-1.
- Intermediate-term Treasury yields declined to record lows over the quarter. Two-year U.S. Treasury rates closed at 0.33% in early November, spurred by the announcement of a second round of quantitative easing ("QE2") by the Federal Reserve at its November 3rd FOMC meeting. The Fed called for an additional $600 billion in longer-term Treasury purchases through June 2011 in an attempt to reduce corporate, consumer, and mortgage borrowing rates, thus stimulating economic growth through corporate investment and support for the housing sector. By the end of the fourth quarter of 2010, the Fed had purchased nearly $168 billion in Treasury securities.
- By the end of the quarter, intermediate-term yields increased sharply from record lows in early November, but remained well below long-term historical averages. The yield increases were due in part to increased inflation expectations as a result of QE2, as well as the extension of the Bush-era tax cuts, which will add an additional $858 billion to the economy over two years. The two-year U.S. Treasury yield ended the quarter at 0.59%, closing 0.17% higher than it opened.
- Overall economic conditions appear to be improving. For example, third quarter GDP was 2.6%, a substantial improvement over second quarter GDP. However this level of growth remains insufficient to impact the problematically high unemployment rate. Nonetheless, the unemployment rate was 9.4% in December, the lowest reading of the year. At the same time, the number of discouraged workers hit a record high 3.1 million – these workers are not counted in the headline unemployment rate.
- Commercial paper continues to add significant value over other short-term alternatives. The three-month Abbey National commercial paper that was purchased in the Investment Portfolio at the end of October had a yield of 0.36%, which was 0.22% higher than a three-month Treasury security and 0.15% higher than a 1-year Treasury security at that time.
- We executed a buy and a sell of Federal Agency Notes in early December, picking up 13 basis points in yield as a result of the trade. The portfolio's return of 0.07%, performed in line with the benchmark's return of 0.07%.
- PFM will continue to follow the prudent investment strategies that have safely provided the Town with favorable long-term performance during this period of historic low interest rates.
- Rates have bounced back from all-time lows, but remain depressed from a historical standpoint. The Fed is signaling that it plans to continue to keep rates low for an extended period. As such, we will position the portfolio's duration close to the benchmark's duration in order to capitalize on added yield and roll down. We will closely monitor the markets to make select purchases of securities when rates move towards the upper end of their range.
- Agency spreads over Treasuries continue to be compressed. We will allocate about 35-40% of the portfolio to Treasuries. In the case that spreads widen, Treasuries could outperform agencies. At that point, we will restructure the portfolio, allocating a larger portion to agency securities.
- The Short Term Portfolio continues to provide the Town with favorable yield relative to the benchmark. At quarter end the portfolio had a Yield to Maturity at Cost of 0.28%, performing in line with the Yield to Maturity of its benchmark the S&P GIP Government Index.
- The CIP Series 2010A Portfolio continues to provide the Town with favorable yield relative to the benchmark. At quarter end the portfolio had a Yield to Maturity at Cost of 0.76%, exceeding the Yield to Maturity of its benchmark the S&P GIP Government Index by 49 basis points (0.49%).

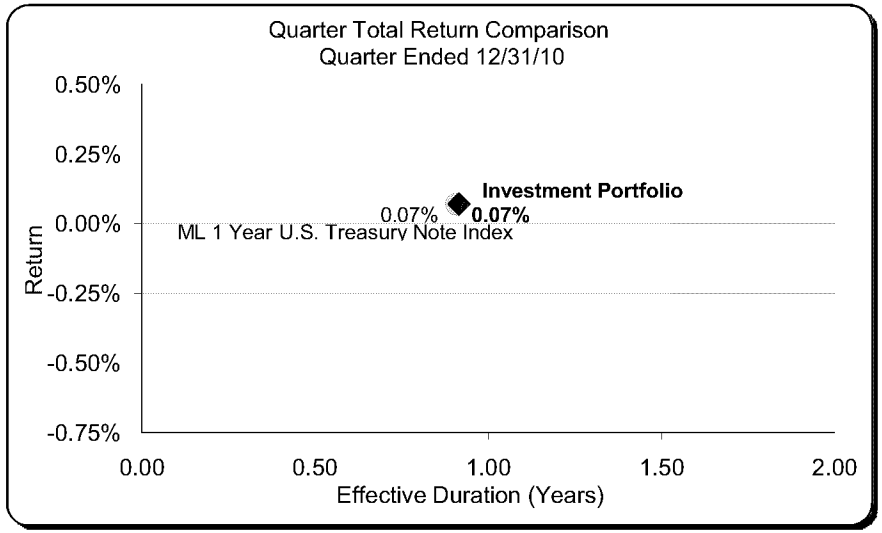
Investment Portfolio (Actively Managed) Performance - 68904240

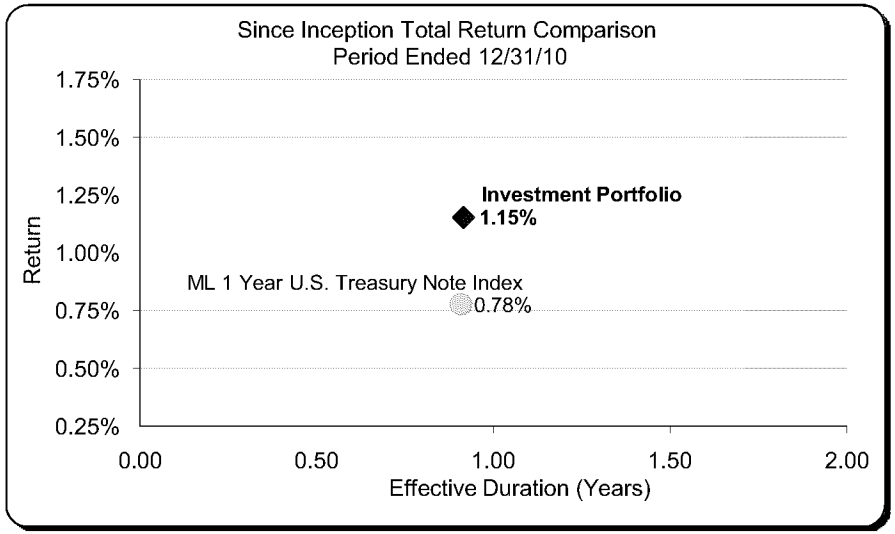
Total Portfolio Value[1,2]	December 31, 2010	September 30, 2010
Market Value	**$10,464,495.54**	$10,457,170.94
Amortized Cost	**$10,434,790.18**	$10,415,756.09

Total Return[1,2,3,4,5,6,7,8]	Quarterly Return December 31, 2010	Calendar Year To Date	Last 12 Months	Last 24 Months	Since Inception 9/30/2009
Investment Portfolio (Actively Managed)	**0.07%**	**1.43%**	**1.43%**	**N/A**	**1.15%**
Merrill Lynch 1 Year U.S. Treasury Note Index	0.07%	0.83%	0.83%	N/A	0.78%

Effective Duration (Years)[4]	December 31, 2010	September 30, 2010
Investment Portfolio (Actively Managed)	**0.92**	**0.91**
ML 1 Year U.S. Treasury Note Index	0.91	0.91
Portfolio Duration % of Benchmark Duration	101%	100%

Yields*	December 31, 2010	September 30, 2010
Yield at Market	**0.43%**	0.33%
Yield at Cost	**0.67%**	0.66%



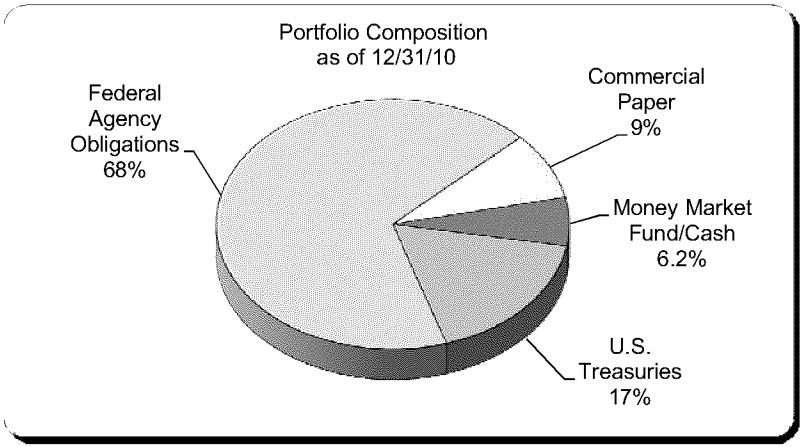


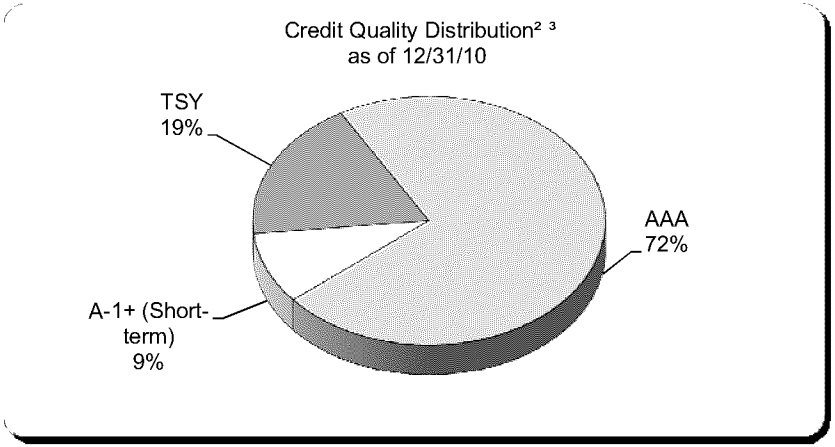
Notes:

1. In order to comply with GASB accrual accounting reporting requirements; forward settling trades are included in the monthly balances.
2. End of quarter trade-date market values of portfolio holdings, including accrued interest.
3. Performance on trade date basis, gross (i.e., before fees), is in accordance with The CFA Institute's Global Investment Performance Standards (GIPS).
4. Merrill Lynch Indices provided by Bloomberg Financial Markets.
5. Quarterly returns are presented on both an unannualized and annualized basis. The annualized return assumes the quarterly return is compounded at the same rate for four quarters and is presented for reference only. The actual annual return will be the result of chaining the most recent four quarterly returns.
6. Includes money market fund/cash in performance and duration computations.
7. Returns presented for 12 months or longer are presented on an annual basis.
8. Past performance is not indicative of future results.

Investment Portfolio (Actively Managed) Composition and Credit Quality Characteristics

Security Type[1]	December 31, 2010	% of Portfolio	September 30, 2010	% of Portfolio
U.S. Treasuries	$1,805,556.96	17.3%	$1,806,932.40	17.3%
Federal Agencies	7,095,684.44	67.8%	6,490,922.72	62.1%
Commercial Paper	909,890.80	8.7%	2,115,803.91	20.2%
Commercial Paper - TLGP	0.00	0.0%	0.00	0.0%
Certificates of Deposit	0.00	0.0%	0.00	0.0%
Bankers Acceptances	0.00	0.0%	0.00	0.0%
Repurchase Agreements	0.00	0.0%	0.00	0.0%
Municipal Obligations	0.00	0.0%	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%	0.00	0.0%
Corporate Notes - FDIC insured	0.00	0.0%	0.00	0.0%
Mortgage Backed	0.00	0.0%	0.00	0.0%
Money Market Fund/Cash	653,363.34	6.2%	43,511.91	0.4%
Totals	$10,464,495.54	100.0%	$10,457,170.94	100.0%



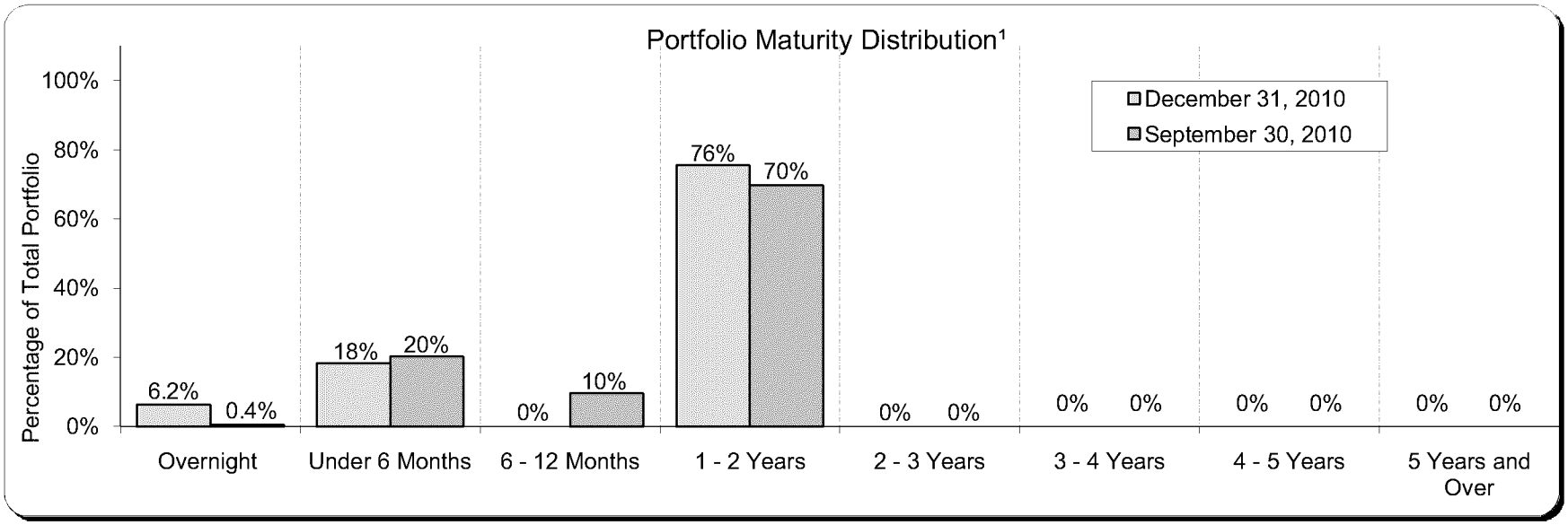


Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. Credit rating of securities held in portfolio, exclusive of money market fund/LGIP.
3. A rating of "TSY" indicates the security is an obligation of, or explicitly guaranteed by the U. S. Government.

Investment Portfolio (Actively Managed) Maturity Distribution

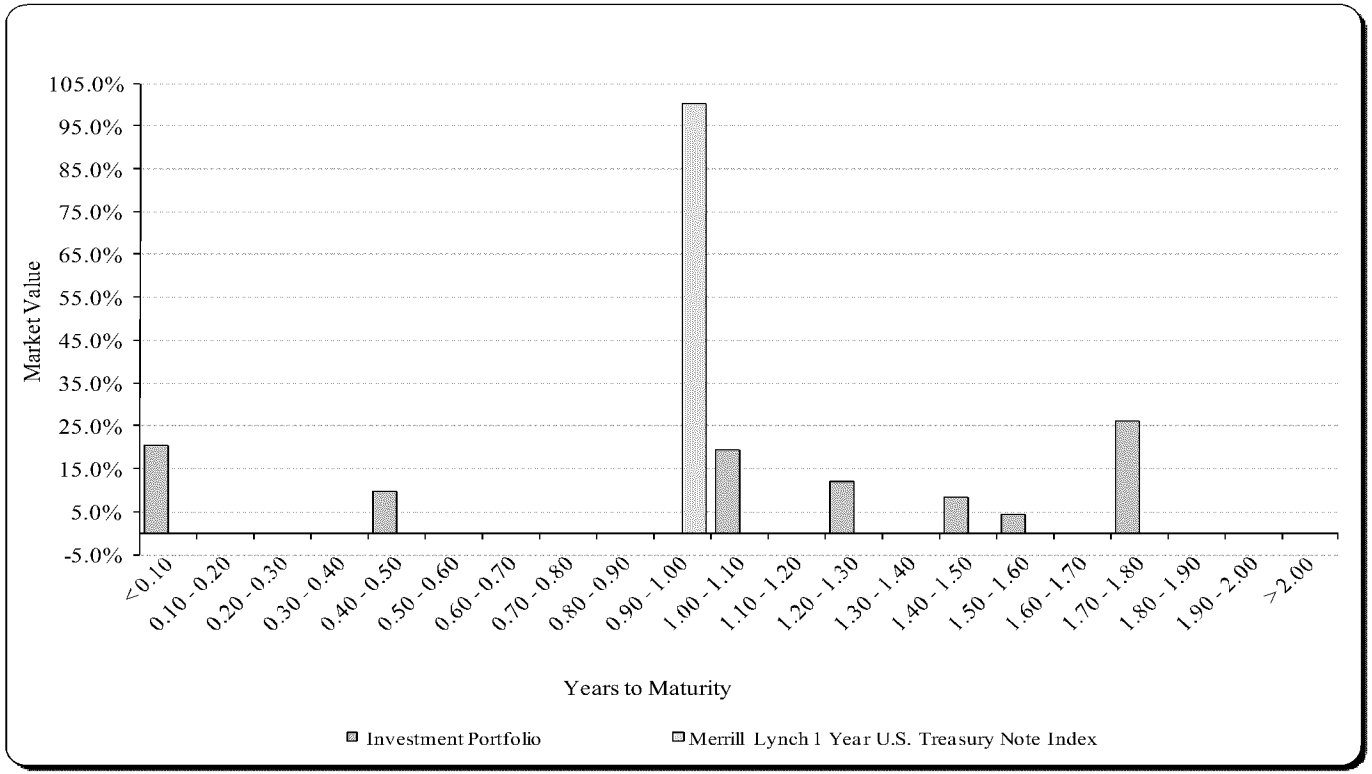
Maturity Distribution[1]	December 31, 2010	September 30, 2010
Overnight (Money Market Fund)	**$653,363.34**	$43,511.91
Under 6 Months	**1,910,401.80**	$2,115,803.91
6 - 12 Months	**0.00**	$1,000,777.56
1 - 2 Years	**7,900,730.40**	$7,297,077.56
2 - 3 Years	**0.00**	$0.00
3 - 4 Years	**0.00**	$0.00
4 - 5 Years	**0.00**	$0.00
5 Years and Over	**0.00**	0.00
Totals	**$10,464,495.54**	$10,457,170.94



Notes:

1. Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity.

Investment Portfolio (Actively Managed) Maturity Distribution versus the Benchmark[1]



Notes:

1. Due to the nature of the security, Mortgage-Backed Securities are represented based on their average life maturity rather than their final maturity.

Short Term and Bond Proceed Portfolios Statistics

Account Name	Amortized Cost[1,2,3] December 31, 2010	Amortized Cost[1,2,3] September 30, 2010	Market Value[1,2,3] December 31, 2010	Market Value[1,2,3] September 30, 2010	Duration (Years)[4] December 31, 2010
Short Term Fund - 68904245	**$37,824,757.09**	$26,811,204.67	**$37,820,861.72**	$26,816,969.74	**0.31**
Worth Avenue Fund - 68904250	**N/A**	3,498,775.00	**N/A**	3,499,191.89	**N/A**
CIP Fund - 68904255	**41,998,887.03**	38,427,285.69	**42,180,319.96**	38,653,797.44	**0.91**
Money Market Fund - PFM Funds Prime Series Excess Funds - 995174	**14,050.90**	1,170.18	**14,050.90**	1,170.18	**53 Days**
Money Market Fund - PFM Funds Prime Series 2010B WORTH AVENUE - 995179	**757,808.84**	3,236,385.82	**757,808.84**	3,236,385.82	**53 Days**
Money Market Fund - PFM Funds Prime Series 2010A CIP - 995180	**685,146.75**	1,231,012.92	**685,146.75**	1,231,012.92	**53 days**
Total	**$81,280,650.61**	$73,205,834.28	**$81,458,188.17**	$73,438,527.99	

Account Name	Yield to Maturity on Cost[5] December 31, 2010	Yield to Maturity on Cost[5] September 30, 2010	Yield to Maturity at Market December 31, 2010	Yield to Maturity at Market September 30, 2010	Duration (Years)[4] September 30, 2010
Short Term Fund - 68904245	**0.28%**	0.50%	**0.30%**	0.25%	0.13
Worth Avenue Fund - 68904250	**N/A**	0.28%	**N/A**	0.18%	0.13
CIP Fund - 68904255	**0.76%**	0.76%	**0.39%**	0.37%	1.13
Money Market Fund - PFM Funds Prime Series Excess Funds - 995174[6]	**0.16%**	0.21%	**0.16%**	0.21%	53 Days
Money Market Fund - PFM Funds Prime Series 2010B WORTH AVENUE - 995179[6]	**0.16%**	0.21%	**0.16%**	0.21%	53 Days
Money Market Fund - PFM Funds Prime Series 2010A CIP - 995180[6]	**0.16%**	0.21%	**0.16%**	0.21%	53 days
Weighted Average Yield	**0.53%**	0.61%	**0.34%**	0.31%	

Benchmarks	December 31, 2010	September 30, 2010
S&P GIP Government 30 Day Index[7]	**0.27%**	0.31%

Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. In order to comply with GASB accrual accounting reporting requirements; forward settling trades are included in the monthly balances.
3. Includes any money market fund/cash balances held in custodian account.
4. Money Market Fund duration is based on weighted average duration in days.
5. Past performance is not indicative of future results.
6. Seven day yield as of quarter end. The yields shown above represent past performance. Past performance is no guarantee of future results and yields may vary. The current fund performance may be higher or lower than that cited. The current seven-day yield does not include realized gains and losses on the sale of securities. The yields shown above may reflect fee waivers by service providers that subsidize and reduce the total operating expenses of the Funds. Fund yields would be lower if there were no such waivers.
7. Monthly returns, source Bloomberg.

Short Term Portfolio Statistics

Account Name	Amortized Cost[1,2,3] December 31, 2010	Amortized Cost[1,2,3] September 30, 2010	Market Value[1,2,3] December 31, 2010	Market Value[1,2,3] September 30, 2010	Duration (Years)[4] December 31, 2010
Short Term Fund - 68904245	**$34,581,428.98**	$16,411,258.58	**$34,577,533.61**	$16,417,023.65	**0.31**
Money Market Fund - PFM Funds Prime Series Excess Funds - 995174	**14,050.90**	1,170.18	**14,050.90**	1,170.18	**53 Days**
TD Bank Cash	**3,243,328.11**	10,399,946.09	**3,243,328.11**	10,399,946.09	**50 Days**
Total	**$37,838,807.99**	$26,812,374.85	**$37,834,912.62**	$26,818,139.92	

Account Name	Yield to Maturity on Cost[5] December 31, 2010	Yield to Maturity on Cost[5] September 30, 2010	Yield to Maturity at Market December 31, 2010	Yield to Maturity at Market September 30, 2010	Duration (Years) September 30, 2010
Short Term Fund - 68904245	**0.28%**	0.50%	**0.30%**	0.25%	0.13
Money Market Fund - PFM Funds Prime Series Excess Funds - 995174[6]	**0.16%**	0.21%	**0.16%**	0.21%	53 Days
TD Bank Cash	**0.01%**	0.01%	**0.01%**	0.01%	54 Days
Weighted Average Yield	**0.26%**	0.31%	**0.28%**	0.16%	

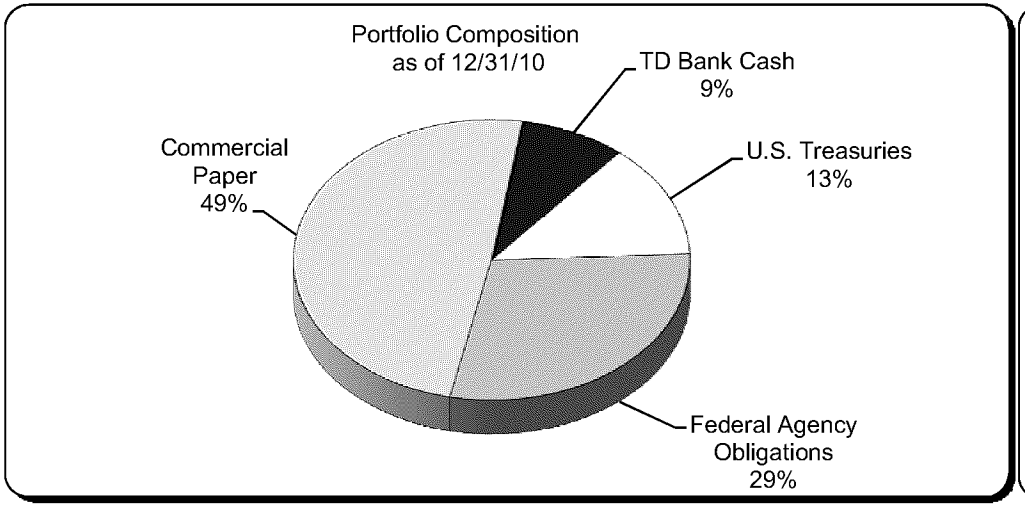
Benchmarks	December 31, 2010	September 30, 2010
S&P GIP Government 30 Day Index[7]	**0.27%**	0.31%

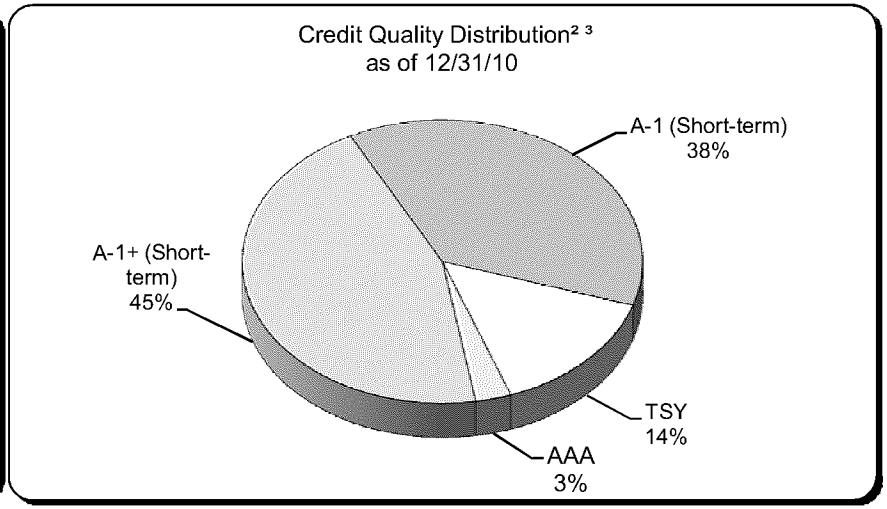
Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. In order to comply with GASB accrual accounting reporting requirements; forward settling trades are included in the monthly balances.
3. Excludes any money market fund/cash balances held in custodian account.
4. Money Market Fund duration is based on weighted average duration in days.
5. Past performance is not indicative of future results.
6. Seven day yield as of quarter end. The yields shown above represent past performance. Past performance is no guarantee of future results and yields may vary. The current fund performance may be higher or lower than that cited. The current seven-day yield does not include realized gains and losses on the sale of securities. The yields shown above may reflect fee waivers by service providers that subsidize and reduce the total operating expenses of the Funds. Fund yields would be lower if there were no such waivers.
7. Monthly returns, source Bloomberg.

Short Term Fund Portfolio Composition and Credit Quality Characteristics

Security Type[1]	December 31, 2010	% of Portfolio	September 30, 2010	% of Portfolio
U.S. Treasuries	$4,997,521.04	13.2%	$3,011,556.83	11.2%
Federal Agencies	10,991,292.97	29.1%	8,405,816.82	31.3%
Commercial Paper	18,588,719.60	49.1%	4,999,650.00	18.6%
Certificates of Deposit	0.00	0.0%	0.00	0.0%
Bankers Acceptances	0.00	0.0%	0.00	0.0%
Repurchase Agreements	0.00	0.0%	0.00	0.0%
Municipal Obligations	0.00	0.0%	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%	0.00	0.0%
TD Bank Cash	3,243,328.11	8.6%	10,399,946.09	38.8%
Money Market Fund - PFM Funds Prime Series	14,050.90	0.04%	1,170.18	0.00%
Totals	$37,834,912.62	100.0%	$26,818,139.92	100.0%



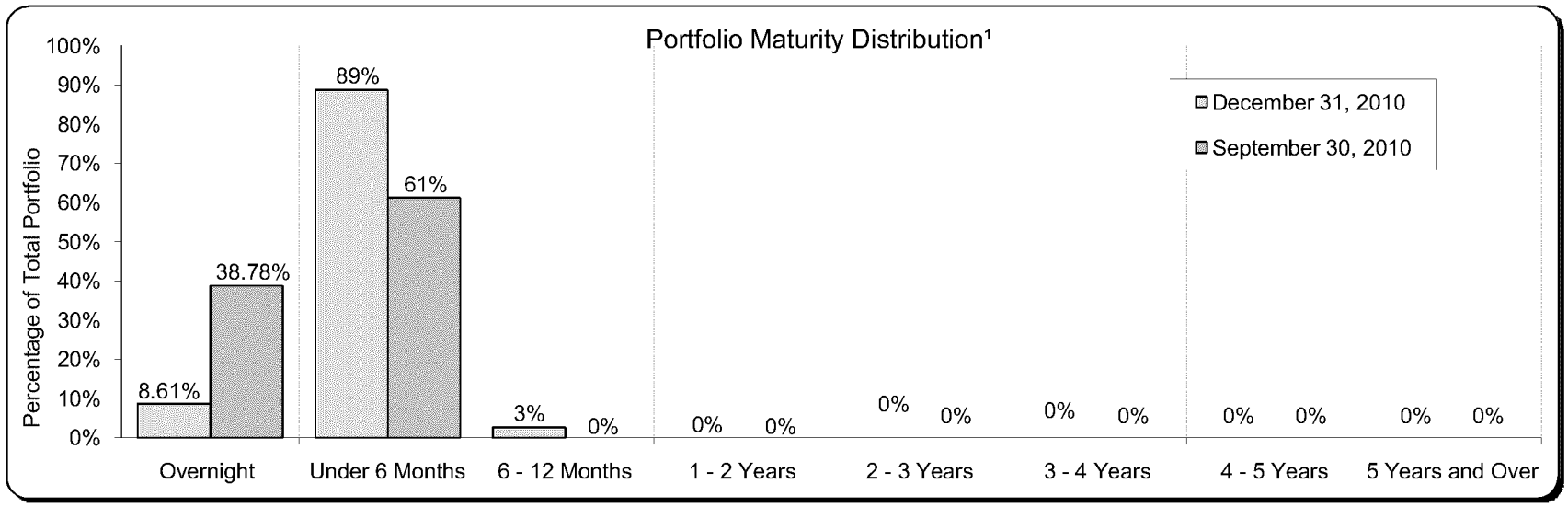


Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. Credit rating of securities held in portfolio.
3. A rating of "TSY" indicates the security is an obligation of, or explicitly guaranteed by the U. S. Government.

Short Term Fund Portfolio Maturity Distribution

Maturity Distribution[1]	December 31, 2010	September 30, 2010
Overnight (Money Market Fund)	**$3,257,379.01**	$10,401,116.27
Under 6 Months	**33,578,479.24**	16,417,023.65
6 - 12 Months	**999,054.37**	0.00
1 - 2 Years	**0.00**	0.00
2 - 3 Years	**0.00**	0.00
3 - 4 Years	**0.00**	0.00
4 - 5 Years	**0.00**	0.00
5 Years and Over	**0.00**	0.00
Totals	**$37,834,912.62**	$26,818,139.92



Notes:

1. Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity.

2010A CIP Portfolio Statistics

Account Name	Amortized Cost[1,2,3] December 31, 2010	Amortized Cost[1,2,3] September 30, 2010	Market Value[1,2,3] December 31, 2010	Market Value[1,2,3] September 30, 2010	Duration (Years)[4] December 31, 2010
CIP Fund - 68904255	**$37,967,114.42**	$38,071,966.29	**$38,148,547.35**	$38,298,478.04	**0.91**
Money Market Fund - PFM Funds Prime Series 2010A CIP - 995180	**685,146.75**	1,231,012.92	**685,146.75**	1,231,012.92	**53 Days**
TD Bank Cash	**4,031,772.61**	355,319.40	**4,031,772.61**	355,319.40	**50 Days**
Total	**$42,684,033.78**	$39,658,298.61	**$42,865,466.71**	$39,884,810.36	

Account Name	Yield to Maturity on Cost[5] December 31, 2010	Yield to Maturity on Cost[5] September 30, 2010	Yield to Maturity at Market December 31, 2010	Yield to Maturity at Market September 30, 2010	Duration (Years) September 30, 2010
CIP Fund - 68904255	**0.76%**	0.76%	**0.39%**	0.37%	1.13
Money Market Fund - PFM Funds Prime Series 2010A CIP - 995180[6]	**0.16%**	0.21%	**0.16%**	0.21%	53 Days
TD Bank Cash	**0.01%**	0.01%	**0.01%**	0.01%	54 Days
Weighted Average Yield	**0.68%**	0.74%	**0.35%**	0.36%	

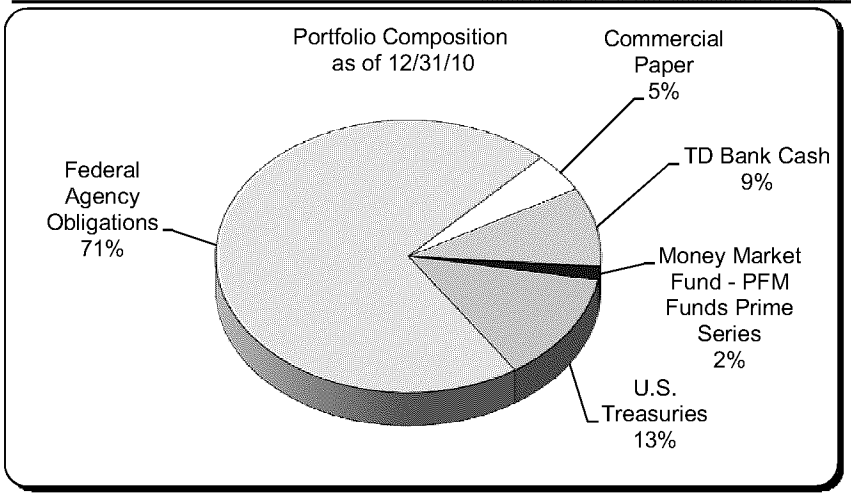
Benchmarks	December 31, 2010	September 30, 2010
S&P GIP Government 30 Day Index[7]	**0.27%**	0.31%

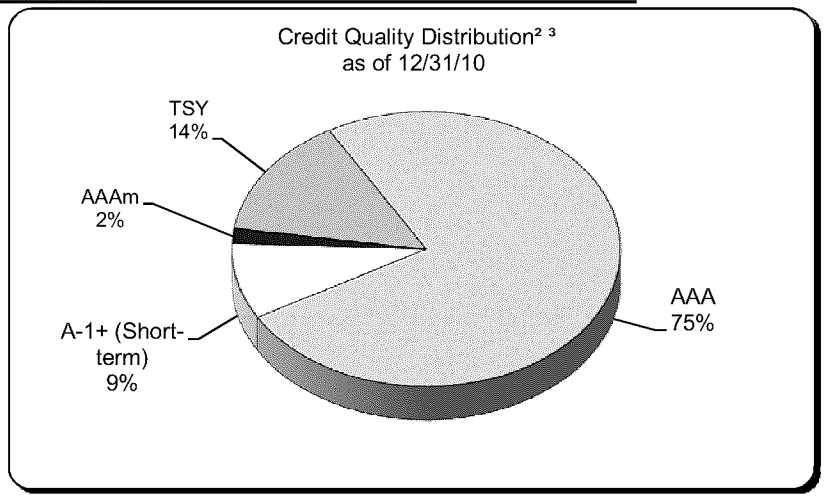
Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. In order to comply with GASB accrual accounting reporting requirements; forward settling trades are included in the monthly balances.
3. Excludes any money market fund/cash balances held in custodian account.
4. Money Market Fund duration is based on weighted average duration in days.
5. Past performance is not indicative of future results.
6. Seven day yield as of quarter end. The yields shown above represent past performance. Past performance is no guarantee of future results and yields may vary. The current fund performance may be higher or lower than that cited. The current seven-day yield does not include realized gains and losses on the sale of securities. The yields shown above may reflect fee waivers by service providers that subsidize and reduce the total operating expenses of the Funds. Fund yields would be lower if there were no such waivers.
7. Monthly returns, source Bloomberg.

2010A CIP Portfolio Composition and Credit Quality Characteristics

Security Type[1]	December 31, 2010	% of Portfolio	September 30, 2010	% of Portfolio
U.S. Treasuries	**$5,521,627.47**	**12.9%**	$5,527,365.95	13.9%
Federal Agencies	**30,626,507.76**	**71.4%**	32,771,112.09	82.2%
Commercial Paper	**2,000,412.12**	**4.7%**	0.00	0.0%
Certificates of Deposit	**0.00**	**0.0%**	0.00	0.0%
Bankers Acceptances	**0.00**	**0.0%**	0.00	0.0%
Repurchase Agreements	**0.00**	**0.0%**	0.00	0.0%
Municipal Obligations	**0.00**	**0.0%**	0.00	0.0%
Corporate Notes/Bonds	**0.00**	**0.0%**	0.00	0.0%
TD Bank Cash	**4,031,772.61**	**9.4%**	355,319.40	0.9%
Money Market Fund - PFM Funds Prime Series	**685,146.75**	**1.6%**	1,231,012.92	3.1%
Totals	**$42,865,466.71**	**100.0%**	$39,884,810.36	100.0%



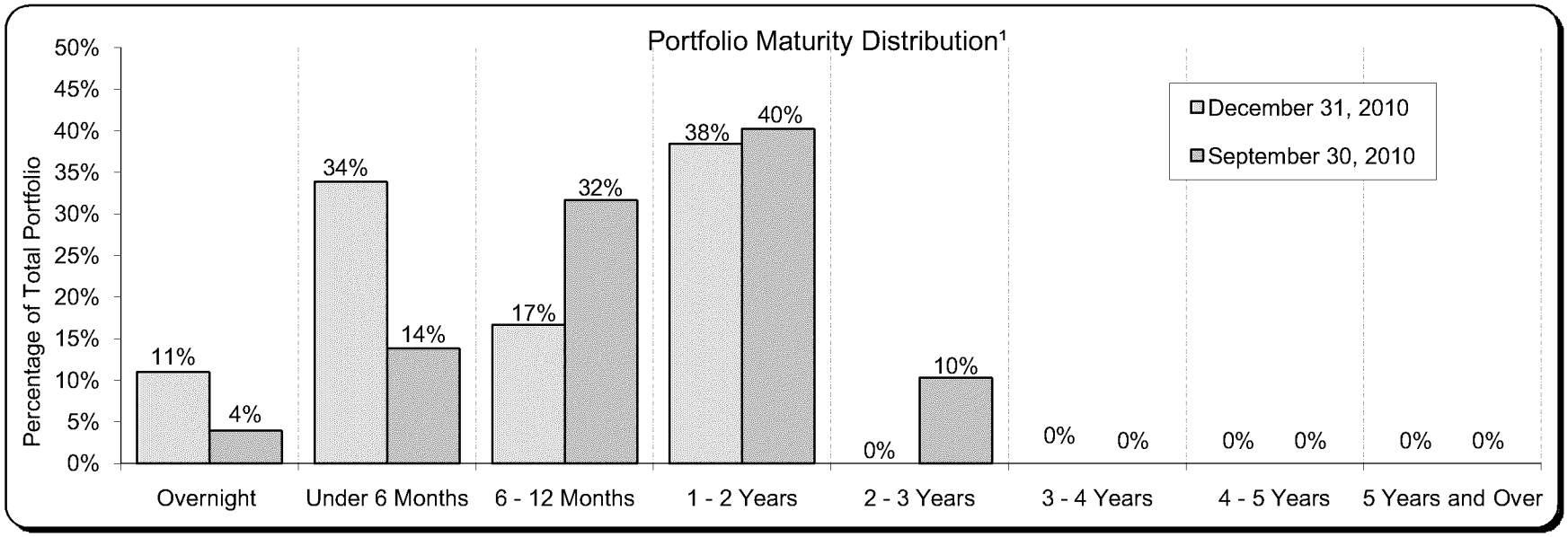


Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. Credit rating of securities held in portfolio.
3. A rating of "TSY" indicates the security is an obligation of, or explicitly guaranteed by the U. S. Government.

2010A CIP Portfolio Maturity Distribution

Maturity Distribution[1]	December 31, 2010	September 30, 2010
Overnight (Money Market Fund)	**$4,716,919.36**	$1,586,332.32
Under 6 Months	**14,517,261.13**	5,512,002.80
6 - 12 Months	**7,141,841.00**	12,639,466.08
1 - 2 Years	**16,489,445.22**	16,036,564.94
2 - 3 Years	**0.00**	4,110,444.22
3 - 4 Years	**0.00**	0.00
4 - 5 Years	**0.00**	0.00
5 Years and Over	**0.00**	0.00
Totals	**$42,865,466.71**	$39,884,810.36



Notes:

1. Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity.

2010B Worth Avenue Portfolio Statistics

Account Name	Amortized Cost[1,2,3] December 31, 2010	Amortized Cost[1,2,3] September 30, 2010	Market Value[1,2,3] December 31, 2010	Market Value[1,2,3] September 30, 2010	Duration (Years)[4] December 31, 2010
Worth Avenue Fund - 68904250	N/A	$3,498,775.00	N/A	$3,499,191.89	N/A
Money Market Fund - PFM Funds Prime Series 2010B WORTH AVENUE - 995179	757,808.84	3,236,385.82	757,808.84	3,236,385.82	53 Days
Total	$757,808.84	$6,735,160.82	$757,808.84	$6,735,577.71	

Account Name	Yield to Maturity on Cost[5] December 31, 2010	Yield to Maturity on Cost[5] September 30, 2010	Yield to Maturity at Market December 31, 2010	Yield to Maturity at Market September 30, 2010	Duration (Years)[4] September 30, 2010
Worth Avenue Fund - 68904250	N/A	0.28%	N/A	0.18%	0.13
Money Market Fund - PFM Funds Prime Series 2010B WORTH AVENUE - 995179[6]	0.16%	0.21%	0.16%	0.21%	53 Days
Weighted Average Yield	0.16%	0.25%	0.16%	0.19%	

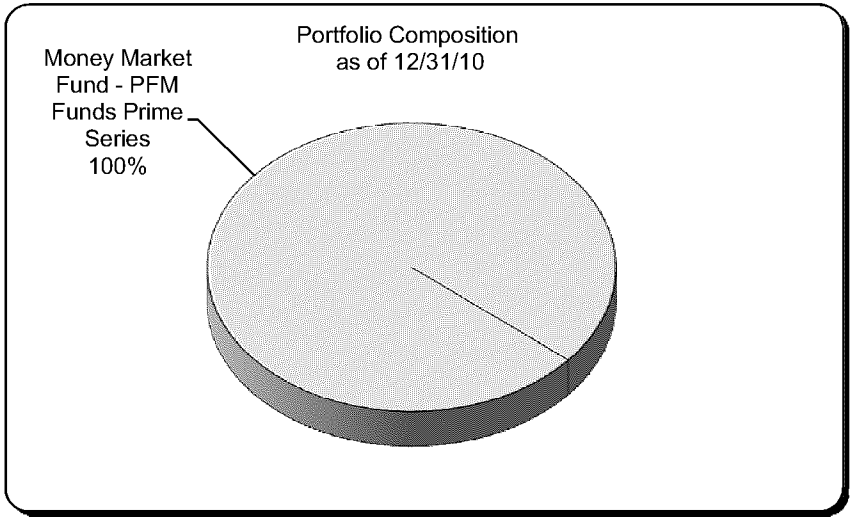
Benchmarks	December 31, 2010	September 30, 2010
S&P GIP Government 30 Day Index[7]	0.27%	0.31%

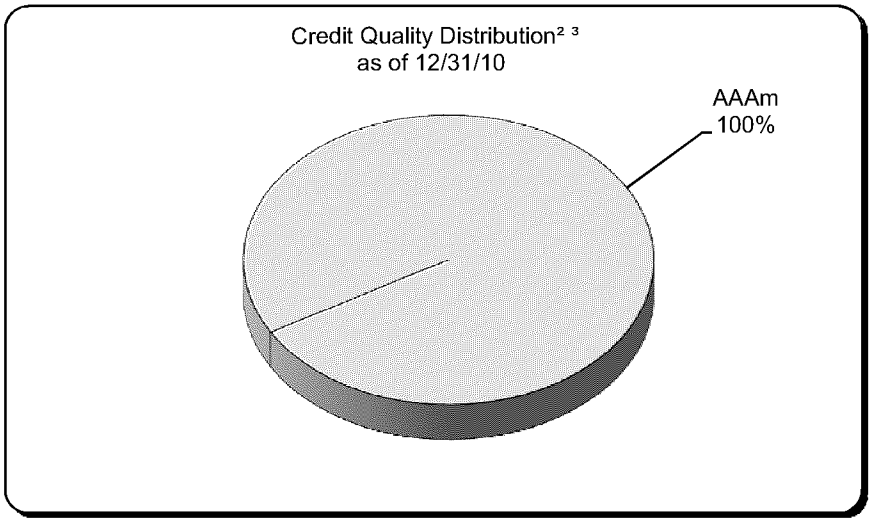
Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. In order to comply with GASB accrual accounting reporting requirements; forward settling trades are included in the monthly balances.
3. Excludes any money market fund/cash balances held in custodian account.
4. Money Market Fund duration is based on weighted average duration in days.
5. Past performance is not indicative of future results.
6. Seven day yield as of quarter end. The yields shown above represent past performance. Past performance is no guarantee of future results and yields may vary. The current fund performance may be higher or lower than that cited. The current seven-day yield does not include realized gains and losses on the sale of securities. The yields shown above may reflect fee waivers by service providers that subsidize and reduce the total operating expenses of the Funds. Fund yields would be lower if there were no such waivers.
7. Monthly returns, source Bloomberg.

2010B Worth Avenue Portfolio Composition and Credit Quality Characteristics

Security Type[1]	December 31, 2010	% of Portfolio	September 30, 2010	% of Portfolio
U.S. Treasuries	$0.00	0.0%	$0.00	0.0%
Federal Agencies	0.00	0.0%	3,499,191.89	52.0%
Commercial Paper	0.00	0.0%	0.00	0.0%
Certificates of Deposit	0.00	0.0%	0.00	0.0%
Bankers Acceptances	0.00	0.0%	0.00	0.0%
Repurchase Agreements	0.00	0.0%	0.00	0.0%
Municipal Obligations	0.00	0.0%	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%	0.00	0.0%
Mortgage Backed	0.00	0.0%	0.00	0.0%
Money Market Fund - PFM Funds Prime Series	757,808.84	100.0%	3,236,385.82	48.0%
Totals	$757,808.84	100.0%	$6,735,577.71	100.0%



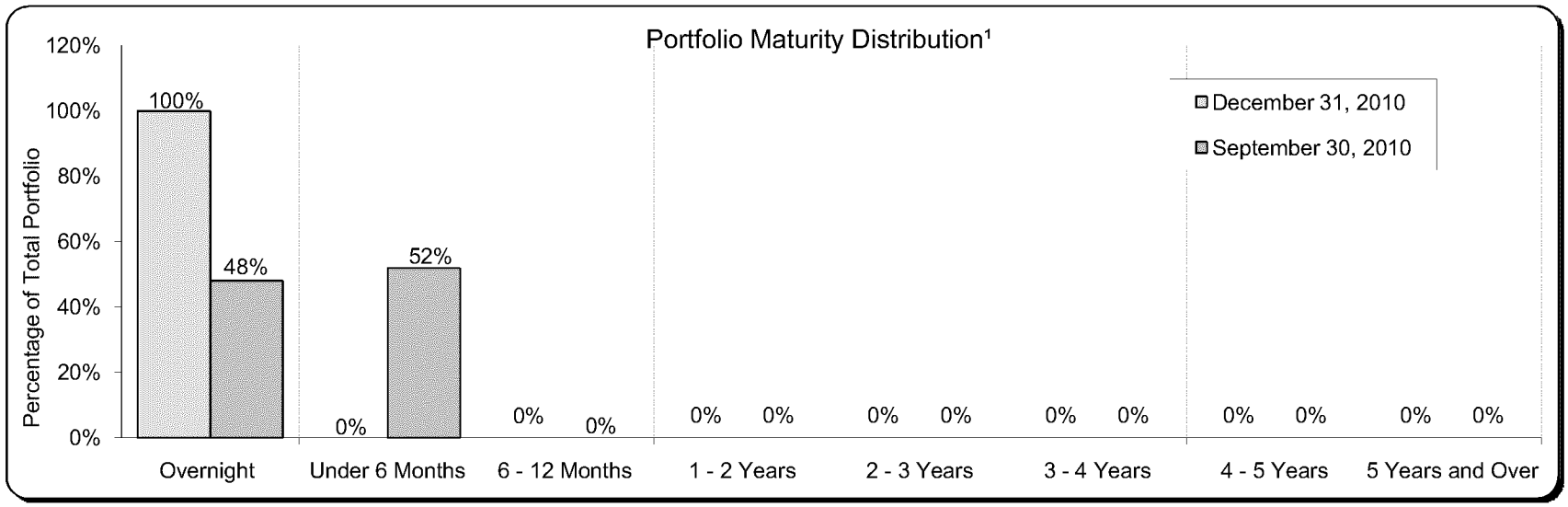


Notes:

1. End of quarter trade-date market values of portfolio holdings, including accrued interest.
2. Credit rating of securities held in portfolio.

2010B Worth Avenue Portfolio Maturity Distribution

Maturity Distribution[1]	December 31, 2010	September 30, 2010
Overnight (Money Market Fund)	**$757,808.84**	$3,236,385.82
Under 6 Months	**0.00**	3,499,191.89
6 - 12 Months	**0.00**	0.00
1 - 2 Years	**0.00**	0.00
2 - 3 Years	**0.00**	0.00
3 - 4 Years	**0.00**	0.00
4 - 5 Years	**0.00**	0.00
5 Years and Over	**0.00**	0.00
Totals	**$757,808.84**	$6,735,577.71



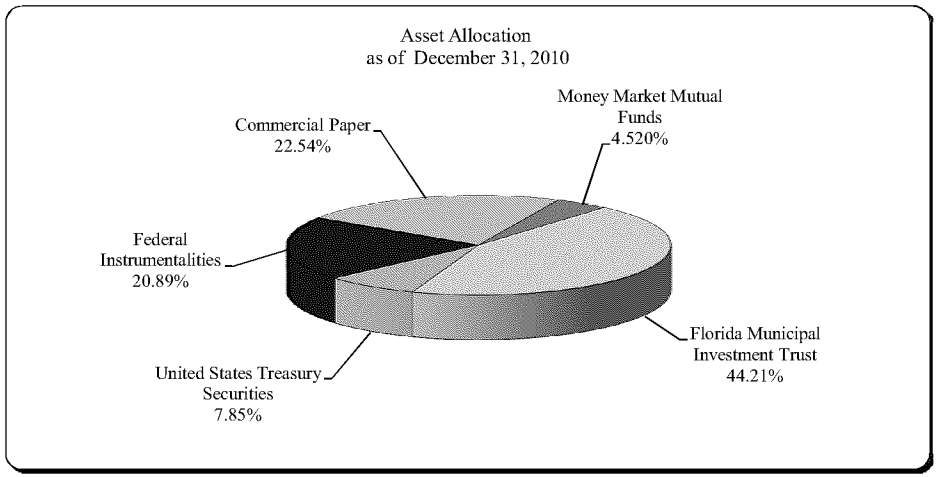
Notes:

1. Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity.

Town of Palm Beach - Non-Bond Funds[1]

Asset Allocation as of December 31, 2010*

Security Type	December 31, 2010	December 31, 2010	Notes	Permitted by Policy
Florida SBA	-	0.00%		100%
United States Treasury Securities	6,790,376.67	7.85%		100%
United States Government Agency Securities	-	0.00%		50%
Federal Instrumentalities	18,072,638.09	20.89%		80%
Certificates of Deposit	-	0.00%		50%
Repurchase Agreements	-	0.00%		50%
Commercial Paper	19,499,841.06	22.54%		25%
Corporate Notes	-	0.00%		25%
Corporate Notes TLGP - FDIC insured	-	0.00%		50%
Bankers' Acceptances	-	0.00%		35%
Stateand/or Local Government Debt	-	0.00%		20%
Money Market Mutual Funds	3,910,740.30	4.52%		50%
Florida Municipal Investment Trust	38,254,161.00	44.21%	2	40%



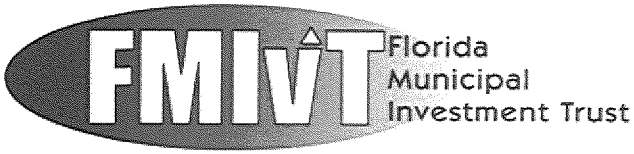
Individual Issuer Breakdown	December 31, 2010	December 31, 2010	Notes	Permitted by Policy
Government National Mortgage Association (GNMA)	-	0.00%		25%
US Export-Import Bank (Ex-Im)	-	0.00%		25%
Farmers Home Administration (FMHA)	-	0.00%		25%
Federal Financing Bank	-	0.00%		25%
Federal Housing Administration (FHA)	-	0.00%		25%
General Services Administration	-	0.00%		25%
New Communities Act Debentures	-	0.00%		25%
US Public Housing Notes & Bonds	-	0.00%		25%
US Dept. of Housing and Urban Development	-	0.00%		25%
Federal Farm Credit Bank (FFCB)	1,000,080.88	1.16%		30%
Federal Home Loan Bank (FHLB)	999,535.27	1.16%		30%
Federal National Mortgage Association (FNMA)	5,468,164.86	6.32%		30%
Federal Home Loan Mortgage Corporation (FHLMC)	10,604,857.08	12.26%		30%
Student Loan Marketing Association (SLMA)	-	0.00%		0%

Individual Issuer Breakdown	December 31, 2010	December 31, 2010	Notes	Permitted by Policy
CD - Bank A	-	0.00%		25%
CD - Bank B	-	0.00%		25%
Fully collateralized Repo - A	-	0.00%		25%
Fully collateralized Repo - B	-	0.00%		25%
Abbey National CP	909,845.30	1.05%		15%
Societe Generale CP	4,998,622.20	5.78%		15%
Credit Agircole CP	4,997,295.85	5.78%		15%
Toyota CP	599,025.67	0.69%		15%
Deutsche Bank CP	7,995,052.04	9.24%		15%
Corporate Notes A - FDIC insured	-	0.00%		25%
Corporate Notes B - FDIC insured	-	0.00%		25%
Corporate Notes C - FDIC insured	-	0.00%		25%
Corporate Notes - A	-	0.00%		5%
Corporate Notes - B	-	0.00%		5%
BA Bank A	-	0.00%		20%
Municipal Notes/Bonds	-	0.00%		20%
Money Market Fund - PFM Funds 995174	14,048.85	0.02%		25%
Money Market Fund - TD Bank Sweep Account	3,896,691.45	4.50%		25%
FMIvT 1-3	22,628,912.00	26.15%	2	40%
FMIvT Interm	15,625,249.00	18.06%	2	40%

Notes:

1. End of quarter trade-date amortized cost values of portfolio holdings, including accrued interest.
2. Managed by the Town.

* Does not include bond proceeds



Florida Municipal Investment Trust

Summary of Performance Returns

Periods Ending December 31, 2010

	Market Values (000s)	*One Month*	*Qtr. And Sept. 30, FYTD*	*One Year*	*Three Years*	*Five Years*	*Seven Years*	*Ten Years*
Fixed Income Portfolios								
FMIvT 0-2 Year High Quality Bond Fund [1]	$182,725	0.04 %	0.08 %	0.97 %	N/A	N/A	N/A	N/A
BofA ML 1 Year Treasury Note Index		*0.03 %*	*0.08 %*	*0.84 %*	*2.12 %*	*3.31 %*	*2.81 %*	*3.16 %*
FMIvT High Quality 1-3 Year Bond Fund	$477,331	0.01 %	0.07 %	1.97 %	3.52 %	4.38 %	3.70 %	4.12 %
BofA ML 1-3 Yr Government Index		*(0.17)%*	*(0.13)%*	*2.33 %*	*3.41 %*	*4.30 %*	*3.45 %*	*4.03 %*
FMIvT Intermediate High Quality Bond Fund	$299,257	(0.64)%	(0.66)%	4.81 %	5.31 %	5.65 %	4.87 %	5.35 %
Barclays Capital High Quality Intermediate Aggregate [2]		*(0.93)%*	*(0.73)%*	*5.96 %*	*5.64 %*	*5.73 %*	*4.90 %*	*5.57 %*
FMIvT Broad Market High Quality Bond Fund	$162,257	(0.75)%	(1.25)%	5.41 %	5.42 %	5.67 %	5.16 %	5.46 %
Barclays Capital Aggregate A+		*(1.08)%*	*(1.30)%*	*6.15 %*	*5.63 %*	*5.67 %*	*4.99 %*	*5.69 %*
FMIvT Expanded High Yield Bond Fund	$48,279	1.44 %	2.43 %	12.35 %	8.29 %	N/A	N/A	N/A
Barclays Capital High Yield 2% Constrained Index		*1.81 %*	*3.23 %*	*14.94 %*	*10.59 %*	*8.90 %*	*8.32 %*	*9.01 %*
Equity Portfolios								
FMIvT High Quality Growth Portfolio	$36,321	4.77 %	13.76 %	18.60 %	0.74 %	5.03 %	5.22 %	1.49 %
Russell 1000 Growth		*5.51 %*	*11.84 %*	*16.72 %*	*(0.47)%*	*3.76 %*	*4.33 %*	*0.02 %*
FMIvT Diversified Value Portfolio	$35,119	8.29 %	10.99 %	20.32 %	(3.56)%	N/A	N/A	N/A
Russell 1000 Value		*7.89 %*	*10.54 %*	*15.51 %*	*(4.42)%*	*1.28 %*	*4.14 %*	*3.26 %*
FMIvT Russell 1000 Enhanced Index Portfolio [3]	$96,741	5.79 %	10.58 %	17.28 %	(2.62)%	2.92 %	4.58 %	1.79 %
Russell 1000		*6.68 %*	*11.20 %*	*16.10 %*	*(2.38)%*	*2.59 %*	*4.33 %*	*1.83 %*
FMIvT Diversified Small to Mid Cap Equity Portfolio	$60,990	6.81 %	15.50 %	26.43 %	9.24 %	10.15 %	10.96 %	10.57 %
Custom Index [4]		*7.59 %*	*14.85 %*	*27.20 %*	*2.31 %*	*4.53 %*	*6.40 %*	*6.36 %*
FMIvT International Blend Portfolio	$46,236	6.38 %	5.50 %	5.00 %	(11.11)%	(0.02)%	N/A	N/A
MSCI EAFE		*8.11 %*	*6.66 %*	*8.21 %*	*(6.55)%*	*2.94 %*	*6.85 %*	*3.93 %*

[1] *Assets from the FMIvT High Quality Government Fund were transitioned on April 1, 2009, to the FMIvT 0-2 Year High Quality Bond Fund.*

[2] *Index Returns presented represent the Barclays Capital Intermediate Government/Credit (Ex Baa)+ABS+MBS.*

[3] *Portfolio renamed and manager changed in August 2007.*

[4] *Custom Index consists of the Russell 2500 beginning June 1, 2010 and prior to that the Russell 2000.*

Note: Portfolio performance returns presented here are gross of all fees and expenses. Further, performance of each portfolio presented here is not necessarily representative of the actual return of a particular participant within the Trust due to issues related to the timing of contributions and withdrawals by individual participants.

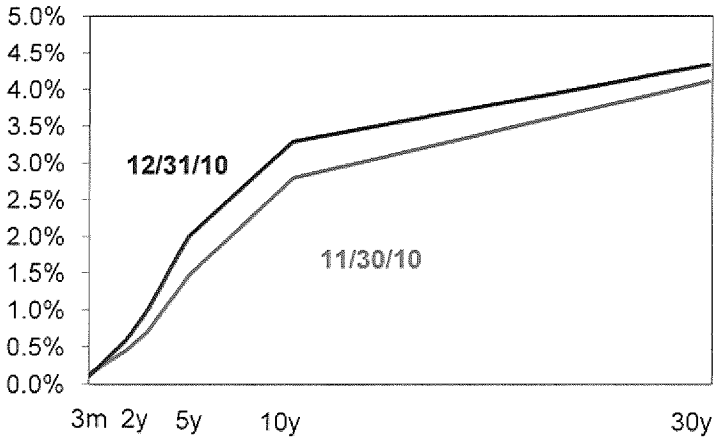
Prepared by: Asset Consulting Group

Atlanta Capital Management Company December 2010

Florida Municipal Investment Trust

Performance*	December 2010
0-2 Year High Quality Bond Fund	**0.04%**
Bank of America Merrill Lynch 1 Year Treasury Note	**0.03%**
1-3 Year High Quality Bond Fund	**0.01%**
Bank of America Merrill Lynch 1-3 Year Government Index	**-0.17%**
Intermediate High Quality Bond Fund	**-0.64%**
Barclays HQ Intermediate Aggregate Index	**-0.93%**

Recent Treasury Yield Curves



Following a string of more upbeat economic data and the Federal Reserve's official announcement of a second round of quantitative easing in November, Treasury yields surged in December pushing bond market returns into negative territory. Dubbed QE2, the Fed's plan is to buy large amounts Treasury bonds to send their prices higher and yields lower. The theory being that lower Treasury yields would reduce the cost of borrowing throughout the economy. In the months prior to their official announcement, it had been working...investors, in a reach for yield, had been buying longer and lower quality securities for nearly two years. With the plan in place, investors blinked.

For the month, the yield on the 2-year and 5-year Treasury yield rose 14 and 54 basis points respectively. The FMIvT portfolios' outperformed their respective benchmarks as the defensive positioning protected the assets from the rise in interest rates. We believe that rising bond yields continue to be the most significant risk to bond investors going forward and we expect that job growth will become more representative of the strengthening economy. We remain positioned defensively holding the portfolio's duration shorter than the benchmark duration.

* Performance Returns: Asset Consulting Group (ACG) gross of fees

Atlanta Capital Management Company

Florida Municipal Investment Trust

December 2010

	Interest Income (1) (Coupon + Amortization)		Return from Change in Price (From Interest Rate Change + Roll Down)		TOTAL RETURN
0-2 Year HQ Bond Fund	0.05%	+	-0.01%	=	0.04%

	Interest Income (1) (Coupon + Amortization)		Return from Change in Price (From Interest Rate Change + Roll Down)		TOTAL RETURN
1-3 Year HQ Bond Fund	0.07%	+	-0.06%	=	0.01%

	Interest Income (1) (Coupon + Amortization)		Return from Change in Price (From Interest Rate Change + Roll Down)		TOTAL RETURN
Intermediate HQ Bond Fund	0.15%	+	-0.79%	=	-0.64%

(1) Based on beginning period yield-to-maturity

* Performance Returns: Asset Consulting Group (ACG) gross of fees

Executive Summary

Town of Palm Beach

Health Insurance Trust

Executive Summary as of December 31, 2010

Preliminary

Assets Market Value	% of Portfolio		1 Mo.	3 Mo.	Fiscal YTD	Calendar YTD	1 YR	2 YRS	3 YRS	5 YRS	Return	Since
			{---------- Period Ending Dec-2010 ----------}								{---Inception---}	
17,338,445	**100.0**	**Total Fund**	**4.5**	**7.5**	**7.5**	**12.7**	**12.7**	**14.7**	**-1.5**	**NA**	**-0.7**	**Jun-07**
		Target Index	4.1	5.7	5.7	11.5	11.5	14.0	-0.5	NA	0.0	Jun-07
		Actual Index	4.2	5.7	5.7	11.7	11.7	13.2	-0.4	NA	-0.1	Jun-07
		65% S&P 500 Index/35% BC Aggregate Index	4.0	6.5	6.5	12.5	12.5	16.9	1.2	NA	1.0	Jun-07
		Consumer Price Index	0.1	0.2	0.2	1.4	1.4	2.1	1.4	2.2	1.4	Jun-07
8,182,964	**47.2**	**Global Equity**	**7.1**	**10.7**	**10.7**	**14.9**	**14.9**	**21.9**	**-5.0**	**NA**	**-4.5**	**Jun-07**
5,045,219	**29.1**	**Domestic Equity**	**7.2**	**13.0**	**13.0**	**17.3**	**17.3**	**21.2**	**-4.9**	**NA**	**-4.8**	**Jun-07**
		Russell 3000 Index	6.8	11.6	11.6	16.9	16.9	22.5	-2.0	2.7	-2.8	Jun-07
3,382,016	19.5	Fidelity Spartan Total Market Index Adv Fund	6.8	11.7	11.7	17.4	17.4	22.8	-1.8	NA	-2.5	Jun-07
		Wilshire 5000 Index	6.8	11.8	11.8	17.7	17.7	23.4	-1.6	3.2	-2.2	Jun-07
814,861	4.7	Sound Shore Fund	8.1	11.3	11.3	12.1	12.1	NA	NA	NA	27.3	Mar-09
		Russell Midcap Value Index	7.6	12.2	12.2	24.8	24.8	29.4	1.0	4.1	44.1	Mar-09
848,342	4.9	Brandywine Fund	7.6	20.6	20.6	21.1	21.1	14.7	-10.0	NA	-6.5	Jun-07
		Russell 3000 Growth Index	5.7	12.3	12.3	17.7	17.7	27.0	-0.3	3.9	0.2	Jun-07
		Russell Midcap Growth Index	6.2	14.0	14.0	26.4	26.4	36.0	1.0	4.9	0.4	Jun-07
3,137,745	**18.1**	**International Equity**	**7.0**	**7.3**	**7.3**	**10.9**	**10.9**	**22.5**	**-5.3**	**NA**	**-4.1**	**Jun-07**
		MSCI EAFE Net Index	8.1	6.6	6.6	7.7	7.7	19.2	-7.0	2.5	-5.9	Jun-07
1,559,599	9.0	Artio Intl Eq II I Fund	6.0	6.5	6.5	8.0	8.0	16.1	-7.0	NA	-5.0	Jun-07
		MSCI AC World xUS Index	7.8	7.2	7.2	11.2	11.2	25.4	-5.0	4.8	-3.2	Jun-07
1,578,147	9.1	Dodge & Cox Intl Stock Fund	8.0	8.0	8.0	13.7	13.7	29.5	-3.7	NA	-3.3	Jun-07
		MSCI EAFE Net Index	8.1	6.6	6.6	7.7	7.7	19.2	-7.0	2.5	-5.9	Jun-07

Prime Buchholz

Executive Summary

Town of Palm Beach

Health Insurance Trust

Executive Summary as of December 31, 2010

Preliminary

Assets Market Value		% of Portfolio		1 Mo.	3 Mo.	Fiscal YTD	Calendar YTD	1 YR	2 YRS	3 YRS	5 YRS	Return	Since
				{—Period Ending Dec-2010—							—}	{—Inception—}	
3,262,143		**18.8**	**Total Flexible Capital**	**1.7**	**3.6**	**3.6**	**6.5**	**6.5**	**11.5**	**1.2**	**NA**	**2.1**	**Jun-07**
			HFRI Fund-of-Funds Index	2.1	3.5	3.5	5.6	5.6	8.5	-2.6	2.4	-1.6	Jun-07
1,635,428	1	9.4	Forester Offshore A2, Ltd.	2.2	4.4	4.4	5.3	5.3	9.8	1.6	NA	3.7	Jun-07
			HFRI Fund-of-Funds Strategic Index	2.3	4.0	4.0	6.1	6.1	9.6	-3.5	2.5	-2.0	Jun-07
1,626,715		9.4	Archstone Market Neutral Strategies Fund, Ltd.	1.2	2.9	2.9	7.9	7.9	13.5	0.8	NA	0.5	Jun-07
			HFRI Fund-of-Funds Conservative Index	1.6	2.7	2.7	5.2	5.2	7.4	-2.6	1.7	-1.9	Jun-07
3,326,812		**19.2**	**Total Fixed Income**	**0.4**	**0.7**	**0.7**	**6.8**	**6.8**	**13.2**	**4.5**	**NA**	**4.1**	**Jun-07**
			Fixed Income Composite Index	0.8	1.6	1.6	7.1	7.1	11.8	5.8	NA	6.1	Jun-07
1,572,714	2	9.1	Income Research Convertibles Account	1.8	2.8	2.8	6.0	6.0	13.0	4.3	NA	4.2	Jun-07
			BOA Conv. Bond US Inv. Gr. Index	2.7	4.4	4.4	7.3	7.3	17.5	5.4	6.3	5.0	Jun-07
1,754,098		10.1	PIMCO Total Ret II Instl Fund	-0.9	-1.1	-1.1	7.7	7.7	NA	NA	NA	10.7	Jan-09
			BC Aggregate Index	-1.1	-1.3	-1.3	6.6	6.6	6.2	5.9	5.8	6.4	Jan-09
2,537,210		**14.6**	**Total Inflation Hedging**	**5.6**	**12.6**	**12.6**	**24.8**	**24.8**	**1.7**	**-9.6**	**NA**	**-8.0**	**Jun-07**
			Inflation Hedging Composite Index	3.9	6.0	6.0	18.2	18.2	7.0	-0.7	NA	0.3	Jun-07
858,004	3	4.9	Guggenheim PLUS II, L.P.	5.0	16.6	16.6	27.8	27.8	-2.3	-11.3	NA	-10.1	Jun-07
			70% NCREIF Index/ 30% NAREIT Index	NA	NA	NA	NA	NA	NA	NA	NA	NA	Jun-07
			NCREIF Property Index	NA	NA	NA	NA	NA	NA	NA	NA	NA	Jun-07
534,626		3.1	Vanguard Inflation-Protected Securities Adm Fund	-1.5	-0.7	-0.7	6.3	6.3	8.6	NA	NA	7.9	Dec-08
			BC US Treasury Inflation Notes Index	-1.6	-0.6	-0.6	6.3	6.3	8.8	5.0	5.3	8.1	Dec-08
597,182		3.4	PIMCO Commodity Real Ret Str Instl Fund	9.7	15.5	15.5	NA	NA	NA	NA	NA	35.5	Jun-10
			DJ-UBS Commodity Index	10.7	15.8	15.8	16.8	16.8	17.9	-3.7	1.2	32.4	Jun-10
547,398		3.2	Vanguard Energy Admiral Fund	10.1	17.7	17.7	NA	NA	NA	NA	NA	23.3	Jun-10
			Spliced Energy Index	10.1	15.2	15.2	16.0	16.0	14.9	-5.0	7.4	23.6	Jun-10

Prime BUCHHOLZ

Executive Summary

Town of Palm Beach

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Executive Summary as of December 31, 2010

Preliminary

Assets Market Value		% of Portfolio		1 Mo.	3 Mo.	Fiscal YTD	Calendar YTD	1 YR	2 YRS	3 YRS	5 YRS	Return	Since
				{---------- Period Ending Dec-2010 ----------}								{---Inception---}	
29,316		**0.2**	**Total Liquid Capital**	**0.0**	**0.0**	**0.0**	**0.1**	**0.1**	**0.1**	**0.7**	**NA**	**1.3**	**Jun-07**
29,316	[4]	0.2	Government Stif 15	0.0	0.0	0.0	0.1	0.1	0.1	0.7	NA	1.3	Jun-07
			Citigroup Treasury Bill 3 Months Index	0.0	0.0	0.0	0.1	0.1	0.1	0.7	2.3	1.3	Jun-07

Please Note: -Periods Greater Than One Year Are Annualized

-Actual Index represents actual allocations with index returns

-Target Index: 27.5% Russell 3000 Index/ 17.5% MSCI EAFE Net Index/ 20% HFRI FOF Index/ 20% BC Aggregate Index/15% Inflation Hedging Composite Index

-Target Index reflects the policy limitations regarding international constraints

-Inflation Hedging Composite Index effective 6/1/2010: 40% 70% NCREIF Index/30% NAREIT Index / 20% BC US Treasury Inflation Notes Index / 20% DJ-UBS Commodity Index / 20% Spliced Energy Index

-Spliced Energy Index includes S&P Energy Index through May 31, 2010; MSCI AC World Energy Index thereafter

-Fixed Income Composite Index effective 6/30/2007: 50% BC Aggregate Index / 50% BOA Conv. Bond US Inv. Gr. Index

[1] Market value estimated using manager reported preliminary performance.

[2] Market value provided by manager due to valuation and accrual discrepancies

[3] Investment valued quarterly. Market value estimated using manager provided preliminary quarter end performance.

[4] Client specific cash performance not available; Citigroup Treasury Bill 3 Month Index is being reported.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda
Committee Reports

Agenda Title
Water Committee Meeting of January 12, 2011

Presenter
David Rosow, Town Council President

Supporting Documents
- Report of Water Committee Meeting Held on January 12, 2011

REPORT OF THE WATER COMMITTEE MEETING
HELD ON WEDNESDAY, JANUARY 12, 2011

I. CALL TO ORDER AND ROLL CALL

The Water Committee Meeting was called to order at 2:17 p.m. on Wednesday, January 12, 2011, in the Town Council Chambers. On roll call, Chair Rosow and Committee Member Coniglio were found to be present. Water Advisory Committee Members Denis Coleman and Terry Levine were also in attendance.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

There was none.

IV. WORKSHOP WITH THE CITY OF WEST PALM BEACH

City of West Palm Beach representatives David Hanks, Public Utilities Director, Richard Williams, Fiscal Services Manager, and Rate Consultant Robert Ori with Public Resources Management Group (PRMG), gave a Power Point presentation. A copy was submitted into the record.

Mr. Hanks stated there were three items that the City wanted to address with the Water Committee:

1. The City would be conducting a new rate study and wanted feedback from the Town on a potential new rate structure which would include more water conservation incentives.

2. The City is changing its billing software and would like to know what the Town would like to include on the water bill.

3. A possible extension to the current contract with the Town, which ends in 2029.

A. RATE STRUCTURE

Mr. Ori stated the current Franchise Agreement established rate block proportionality relationships. He said this limited the ability to change commodity blocks or provide further conservation incentives. He reminded the Committee members that the City bills in CCF (hundred cubic feet); not gallons. He reviewed the current residential water rates that went into effect on October 1, 2010, and the amount of water billed in each block for the City, the Town, and all customers served. He noted that in Palm Beach there was a higher proportionality of water used in the last blocks (17-36 and 37-76, and 77-200 units). He said that any change in water use blocks must be revenue neutral to the City.

Town Manager Peter Elwell advised the Committee that the billed water sales per block was relevant to the on-going rate study and an important factor in possibly extending the Franchise Agreement.

Advisory Member Coleman expressed concern that any compressing of the blocks would result in a shift of the revenue structure of the utility to Palm Beach.

In response to a question from the Chair, Mr. Williams reported that the total revenue for the entire system in 2010 was $48,678,000 and of that number the Town of Palm Beach was $12,961,000 or approximately 26.6%. He further reported that the water consumption of the Town was approximately 33.5% or 2,629,890,000 gallons.

Town Manager Elwell advised that the current Agreement prohibits the City from changing the proportionality without the Town's permission. He said if a change in the blocks was against the best interest of the Town's residents, the Town could choose to not concede to a change in the rate proportionality and the rate study could not create fewer blocks, different distances between the blocks or foist additional costs to the Town compared to that paid by the City.

Advisory Member Coleman asked if there is a policy objective to bring the proportionate use and dollars together. He said there is a higher profit margin on the higher consumption because of the infrastructure in place. Mr. Hanks agreed. A discussion followed on the cost savings as a result of the higher consumption of water by Town residents.

B. BILLING OPTIONS

Mr. Hanks spoke about the upgrade of the City's billing software. He asked what the Town would like to see included in the new billing system.

Chair Rosow asked for the bills to be broken down by block so residents could see how the use of water affects their bill. Mr. Hanks replied that in his experience people did not understand the blocks, but the City would look at all options.

Advisory Member Levine asked about a graph system to compare the usage last year and this year. Mr. Hanks responded that it would be included in the new system.

C. POSSIBLE CONTRACT EXTENSION

Mr. Hanks reported that the contract with the Town expires in 2029 and the water infrastructure would become a Town asset and the Town would be responsible for the lines, valves, meters, fire hydrants, etc. He further reported that the City was considering a 30-year revenue bond in 2012 to complete a new ultra filtration water treatment facility. He suggested negotiating a new agreement to the end of the bond period, 2042, or longer.

Committee Member Coniglio asked what would happen if the Town did not extend the contract. Mr. Hanks responded it may affect the City's bond rating. He said that in 2029 the Town would have to either hire people to maintain the water system or contract with a company to maintain it. He stated that the rate structure would change because the Town would either buy bulk water from the City or the County, if the County extended a line to the Town. Town Manager Elwell added that the proportionality of the rate blocks would remain the same.

Advisory Member Levine asked about a rebate to the Town. Mr. Hanks replied that the City is open to discussion but it would mean a change in the Agreement.

Chair Rosow stated that it had seemed to be the perspective of the Council to stay with the City of West Palm Beach. He proposed that Town staff coordinate with the City staff and come back with a unified suggestion. He said he did not want to put a hidden tax on residents by making money off of their use of water. He suggested any agreement include revenue neutral so the Town would know the rate going forward and it would only increase by certain actions; not the expansion of the City's plant.

Advisory Member Coleman clarified that the City is not expanding the plant but replacing it so the capacity of the new plant would go from 47 million to 50 million gallons per day.

Mr. Hanks spoke about the enhanced water quality of the proposed new plant.

Town Manager Elwell asked for feedback from the Committee. He stated that the focus of the last meeting of the Water Committee was twofold:

1) To create a potential revenue stream and have discussion regarding how it would be used, how it would be calculated, and the amount that would be generated.
2) Protection for the Town's customers against having to pay for any further expansion of the City system because there is no additional customer demand from the Island.

Town Manager Elwell explained that item 2 would not be an issue because the City is in the process of creating a capacity reservation charge that will protect Town and existing West Palm Beach customers. He informed the Committee that as long as the improvements continue to be made and the quality and service continue to improve, the Town does not need to make any changes to the contract; and the Town would still have protection with the rate structure. He asked if it would be advantageous to explore a change that would impose an additional cost on Town residents to provide a water conservation benefit and provide an additional revenue stream for other budgetary issues facing the Town.

Chair Rosow responded that any additional cost would fall disproportionately throughout the Town. Advisory Member Coleman stated he did not have a problem penalizing large users in the community as long as the difference inures to the Town. He expressed concern that the state may lay down some rules about allocation and the Town would have put itself in a contract where it has no flexibility.

Committee Member Coniglio stated that reducing the number of blocks would cause the Town user more money. She said she was in favor of a proportionate rate structure. She stated that the Town needed to be prepared to reduce water. She further stated she supports a water savings incentive but with an established function.

Chair Rosow suggested the Town Manager give the Council a menu of a couple of options to include a revenue stream.

Town Manager Elwell summarized that the Committee's recommendation to the Council at the next meeting would be to continue the conversation with the City towards identifying the pro and con impacts if no change is made to the Agreement, and provide a number of options for how the Town might do something different, with pros and cons for each.

Mr. Hanks reiterated that the City was open to discussing any option from the Town.

V. UPDATE ON PUBLIC/PRIVATE SMART IRRIGATION PROJECT

A. PALM BEACH CIVIC ASSOCIATION RE: PRIVATE INSTALLATIONS

Harvey L. Poppel, Palm Beach Civic Association Director and Water Resources Committee Chair, gave a Power Point presentation. A copy was submitted into the record.

Mr. Poppel stated that taking a strategic view of the water usage issue, conservation is the key method by which one can both satisfy demand and achieve cost control and cost savings. He reviewed a chart of Town water usage from 2006 to 2010 and the rate increases during that time. He stated that Smart Irrigation Technology (SIRT) can save a

lot of money. He shared the results from his own home, which showed a 45% savings. He reviewed the benefits of irrigation conservation. He gave three options to speed SIRT conversion:

1) Mandatory compliance, either by the Town or another authority;
2) Education and encouragement; and
3) Economic incentives or penalties/disincentives.

Mr. Poppel spoke about a temporary rate surcharge that could fund a transformative program to institutionalize the technology. He said that without a source of income, the Town and the Public Works Department would be hard pressed to perform any of the functions for the program. He shared a chart of water usage showing that a small percentage of Town users account for the largest percentage of total usage. A second chart showed that Palm Beach pays a lower rate than other listed communities, especially those out West with active conservation programs. He suggested the Town could surcharge the upper tiers or change the proportionality.

A discussion followed on the definition of SIRT. Town Manager Elwell stated that the Town did set some parameters as to what would satisfy the Town's ordinance.

Advisory Member Levine reported his water bill had dropped 42% when he converted his home. He said that he believed the biggest savings came in changing to water conservation heads on his sprinkler system. Paul Brazil, Director of Public Works, reported an estimated 30% savings in water usage as a result of changing the sprinkler heads. He stated that because the Town does a lot of the watering manually, he did not believe there would be as much savings from new controllers. Advisory Member Levine proposed the Civic Association Committee suggest to the Town to add an addendum to the ordinance requiring that the water conserving sprinkler heads be installed for any new construction or to any major revision of the water system. He said that enforcement could be self-sustaining through the use of a permit fee.

Chair Rosow expressed concern with the control or enforcement of residents changing an individual sprinkler head. John Page, Director of Planning, Zoning, and Building, reported that the number of people obtaining a permit for renovations to their sprinkler system was very small.

Chair Rosow asked about educating gardeners and irrigation people about the technology. He suggested that maybe the people could be licensed to do things according to Palm Beach standards. Town Manager Elwell responded that the Town could reach out to the gardeners and landscape people through workshops or an educational pamphlet, but would not be able to license them. He suggested the Town reach out to the residents and inform them of the savings with the Smart Technology.

Chair Rosow asked the Civic Association to consider an ordinance that would take effect over a period of time, such as ten years, in which all irrigation systems must be converted to a Smart Irrigation System. Committee Member Coniglio responded that it is the

residents that have to conserve. She reminded the Committee of the huge push back when the ordinance was originally adopted. She agreed with Mr. Rosow's proposal but suggested a five-year period.

Chair Rosow stated he would recommend to the Council a five-year program in which all irrigation systems must be replaced with Smart Irrigation throughout the Town.

Committee Member Coniglio asked staff for the state requirements for Smart Irrigation. Town Manager Elwell replied that the state requirements had not changed since they were adopted last spring. He stated that the Town's ordinance has its own definitions of what constitutes a system that would comply.

Mr. Poppel questioned the ability to enforce the program without some form of additional funding. Town Manager Elwell responded that the Town would have a list of people who had obtained permits to convert their system and, at the end of the five-year period, there would be an intense effort to check on those who had not converted.

Chair Rosow asked for a CD of the biggest water users.

B. TOWN PUBLIC WORKS DEPARTMENT RE: PUBLIC INSTALLATIONS

Chair Rosow asked the amount of water reduction as a result of the golf course changing to its own water supply. Mr. Brazil replied it was 32 million gallons a year savings. He reported that outside of the Par 3 Golf Course and the Recreation facility, Public Works budgets $200,000 a year for irrigation. He further reported there are multiple irrigation systems. He stated that Palm Beach County Soil and Water Conservation Service had audited all the irrigations systems and staff was working on the recommendations from the audit. He informed the Committee that the best savings for the money was the irrigation heads and they were being switched out as they could afford it from the existing budget. He said he anticipated a 30% savings. He spoke about the reduction in water use as a result of the Garden Club's assistance with the plantings at the Southern Boulevard Traffic Circle and the Royal Poinciana Median.

VI. ANY OTHER MATTERS

There were none.

VII. ADJOURNMENT

There being no further business, the Water Committee Meeting of Wednesday, January 12, 2011, was adjourned at 4:13 p.m.

APPROVED:

_____

David A. Rosow
Chairman

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Committee Reports

Agenda Title

Ordinances, Rules, and Standards Committee Meeting of January 25, 2011.

Presenter

William Diamond, Town Council Member

Supporting Documents

- Report of Ordinances, Rules, and Standards Committee Meeting Held on January 25, 2011

REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE MEETING
HELD ON TUESDAY, JANUARY 25, 2011

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules, and Standards Committee meeting was called to order on Tuesday, January 25, 2011, at 10:06 a.m. in the Town Council Chambers. On roll call, Chairman Diamond and Committee Member Coniglio were present.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

Dr. Jerome Klein, 225 Emerald Lane, requested to speak. Committee Member Coniglio suggested that Dr. Klein speak under the item in New Business which addresses his concerns relating to restraints on construction activities during season (item IV.B.1.e). Dr. Klein agreed.

IV. REGULAR AGENDA

A. Old Business

1. Ordinance Amending Chapter 114, Taxation

Chairman Diamond stated that the business receipt taxes had been removed from the Ordinance. Town Attorney John Randolph explained that the taxes would come before the Council in the form of a resolution, which could be amended without having to go to first and second reading to amend the ordinance.

Committee Member Coniglio asked if the fees would be published and if they would be similar to those existing now. Thomas Bradford, Deputy Town Manager, explained that the schedule would remain in the Code but the schedule of business taxes would be in a master resolution. Attorney Randolph added that the resolution would be brought to the Town Council simultaneously with the second reading of the Ordinance. Veronica Close, Assistant Director of Planning, Zoning, and Building, stated that the fees would be identical to those existing now. She asked if the categories and the fees could be included in the resolution. She explained that the categories and fees were available on the website

and posted in the Planning & Zoning Office. Attorney Randolph responded that if the categories are in the Ordinance, people can see the categories for which they will be charged. He suggested only the fees be included in the resolution in order to remain consistent.

2. Ordinance Amending Chapter 116, Telecommunications

Sec. 116-6 Public, Educational, and Governmental access channels: Committee Member Coniglio questioned the 180 day time period. Mr. Bradford said he believed it dovetailed the state law that gives the Town the right, even though franchises are issued by the state, to get the channel.

Committee Member Coniglio stated that the current franchise application had a person identified as the contact for any difficulties or complaints. She asked if that designee is still identified for a resident or Town staff to go to for problem resolution. Mr. Bradford replied that the Town would continue to know that contact at Comcast, but Comcast did not have to address the Town's concerns in the same manner as they did in the past. He explained that according to the law, residents would have to file any concerns directly with the state in a complaint process.

Sec. 116-27 Appeals: Chairman Diamond asked if the wording "town commission" should be "town council." Mr. Bradford agreed that the wording should be corrected. In response to a question from Committee Member Coniglio, Mr. Bradford explained that this section is the recourse for the permitting of people who are franchised to operate within the Town.

There was agreement on the amendments to Chapter 114, Taxation, and Chapter 116, Telecommunications, as discussed.

3. Ordinance Amending Chapter 118, Traffic and Vehicles

Sec. 118-123 Placement and use; time indicators: Committee Member Coniglio asked if the use of a cell phone would be added as a capacity for payment. Mr. Bradford explained that when a cell phone account is set up with the Town's kiosks, time is charged through the person's credit card that had been set up on line. Chairman Diamond asked if the word "major" credit card should be used. Mr. Bradford responded that the Town only uses Master Card, Visa, American Express, and Discover. Attorney Randolph suggested that the names of the credit cards not be included in the Ordinance.

Sec. 118-95 Responsibility for violations; authority of police to immobilize vehicle: Chairman Diamond asked if in section (b) the immobilization should be changed for the boot to be placed on the vehicle on the third occasion. Raychel Houston, Parking/Code Enforcement Manager, responded that there had not been as many boots placed on vehicles since the fee went up to $350 to get the boot removed. She explained that once a third unpaid ticket is received the person had seven days to pay that ticket. She said that if

the ticket is not paid, whether or not the vehicle is parked in violation, the vehicle will be booted. She stated it is working very well.

Committee Member Coniglio stated that the Ordinance had been amended so that all penalties and time frames are consistent with the practice and with each other.

Section 26: Committee Member Coniglio asked if additional collection avenues were needed for abandoned vehicles or does it go straight from abandonment to auction. Mrs. Houston answered that once a vehicle is towed away, it becomes the responsibility of the tow company to advertise for the registered owner and notify the owner.

Sec. 118-86 Regulation generally; tow-away zones: Mr. Bradford explained that the last sentence in Section (a) was a modified version of zone parking. He said he intended to work with the merchants and property owners on Worth Avenue to do the zone parking on a trial basis and, perhaps, on a sequential basis by block. Committee Member Coniglio stated that this was to prevent rolling and promote a two-hour turnover for parking spaces. A discussion followed on identification and publication of the zones. Mrs. Houston explained that the new language was to prevent people from rolling within the same parking space. Town Attorney Randolph clarified that people could park in the same zone but not in the same space in excess of the time allowed.

There was agreement on the amendments to Chapter 118, Traffic and Vehicles.

4. Ordinance Amending Chapter 122, Utilities

Sec. 122-141 Permit fees and penalties: Regarding the industrial waste surcharge, Committee Member Coniglio asked where the schedule would be located. Mr. Bradford replied that it would be the same as the other fees, adopted in a separate resolution.

Sec. 122-52 Applicability: Rob Walton, Lead Code Compliance Officer, reported that at least one resident in Town waters his yard from a cistern. He stated that the watering regulations would also apply to him, which helps with enforcement. Mr. Bradford stated that the South Florida Water Management District does not make a differentiation between well water and city water users.

There was agreement on the amendments to Chapter 122, Utilities.

5. Ordinance Amending Chapter 126, Vegetation

Sec. 126-31 Hazardous Trees: Committee Member Coniglio asked if failure of the property owner to adhere to the Ordinance would result in it going to Code Enforcement. Mr. Walton replied that it would have to go to the Code Enforcement procedure, which would give the resident time to argue their case, but the issue would fall under the nuisance abatement process.

Mr. Bradford stated that if there is an emergency situation where a tree has fallen on a wire, FPL wants the resident to call FPL to take care of it.

Mrs. Houston explained that the nuisance abatement process is different from the Code Enforcement process. She reported that a certified letter is sent to the property owner giving them fifteen days to take care of the nuisance. She stated that the Ordinance gives the Town the right to take action on the nuisance, charge the property owner, and put a lien on their property for the work.

There was agreement on the amendments to Chapter 126, Vegetation.

6. Ordinance Amending Chapter 130, Vehicles for Hire

Chairman Diamond asked if there had been any complaints. Mrs. Houston replied that there is a problem because there are only fifty chauffeur's permits and they are all taken. She said there is also a problem with cabs coming into Town. She stated that the Ordinance does not address the issues. Attorney Randolph proposed that staff study these issues and come back to ORS with suggestions. A discussion followed on regulations for taxis and the posting of rates. Mrs. Houston suggested that the regulations for taxis and limos be separated.

Sec. 130-33 Amounts; receipt to be filed; regulations: Committee Member Coniglio asked if the list of drivers is provided to the Town. Mrs. Houston answered that the drivers for the chauffeur's permits are on file. She reported there are four companies in Town that have purchased all the permits due to the large number of drivers they provide. She stated that there had been complaints from the restaurants and hotels about the lack of chauffer permits available. Chairman Diamond said that this issue needed to be addressed.

Sec. 130-64 Permit Fee: Committee Member Coniglio asked if there was a time frame for compliance. Donna Bragel, Payroll Specialist, replied that a letter is sent out in August stating that the money is due by October 31.

There was agreement on the amendments to Chapter 130, Vehicles for Hire, with the understanding that further clarification would be forthcoming by staff.

B. New Business

Clerk's Note: The Committee agreed to hear comments from Dr. Klein next, under Item B.1.e. Following Dr. Klein's comments, the Committee reviewed the remaining portion of New Business in reverse order.

1. Discussion on Anticipated Agenda Items for future ORS Meetings

a. Completion and Presentation of Ordinances Amending Chapters 18 and 66

Mr. Bradford stated that the Chapter 18 changes were almost finished. He further stated that the changes to Chapter 66 would require a meeting with Public Works and Planning, Zoning, and Building. He said these were the last two ordinances to be reviewed in the Code book.

b. Ordinance(s) Allowing Non-Florida Registered Architects to Serve on Town Boards and Commissions Requiring Registered Florida Architects

Chairman Diamond asked if there was much difference with architects from other states. He said it would open the Town's ability to have more and different people on the Town's Boards and Commissions. Committee Member Coniglio stated that the Council had discussed this previously and the community, homeowners, architects, and construction companies agreed that the nuances of the State of Florida are important to the requirements, even for the Commissions.

Anita Seltzer, 44 Cocoanut Row, addressed the Committee stating that unlicensed individuals can serve on ARCOM and Landmarks but cannot fill the positions that require a license. She said that if non-Florida registered architects are allowed to serve, there would be Florida licensed architects and landscape architects seeking approval for projects from an individual who had not obtained a license in Florida.

Attorney Randolph advised that the person on the job would be a licensed architect or landscape architect. He asked if the person reviewing the project from an aesthetic standpoint needed to be registered in the State of Florida.

Mr. Walton stated that because of the intricacies of Florida, he would like to keep it local.

Mr. Page reported that from time-to-time as there are vacancies on ARCOM and Landmarks, and it is sometimes difficult to find someone who is licensed in the State of Florida and willing to volunteer their time. Committee Member Coniglio responded that the role had been expanded to allow a non-resident to fulfill one of the architectural requirements.

There was no agreement on an amendment to the Ordinance. It was agreed that the item should go before the Town Council for discussion. Committee Member Coniglio suggested Mr. Page add this item to his comments at the next Landmarks and ARCOM meetings and bring back the responses for consideration.

c. Revisit Lawn Maintenance Noise Regulations

Chairman Diamond stated that there had to be a way to cut down on the noise because it was unbearable. Mr. Walton reported there are lawn vacuums but if they are required, it

would hurt the smaller maintenance companies. He explained that the problem is that five-to-six maintenance people swarm the yard and the noise is cumulative. He stated that the leaf blowers are restricted to 65 decibels but other yard equipment is not certified at that level. Chairman Diamond asked if the regulations could be changed to apply cumulatively. Mr. Walton responded that he could look into it. He reported that the leaf blower complaints had dropped dramatically with the new standard. Attorney Randolph advised that the Ordinance was written that the decibel level at the property line shall not exceed "X." Mr. Walton reported that leaf blowers were not retested annually and it is a voluntary compliance program. Mrs. Houston shared information on regulations in other communities. Chairman Diamond suggested that Code Enforcement look for technological improvements and other suggestions that could help reduce the noise. He asked that they report back to ORS.

d. Ordinance(s) Modifying Attendance Requirements for Boards and Commissions that Meet Monthly and Quarterly other than ARCOM

Mr. Bradford explained that the three-strike rule as it relates to absences appeared to have been created on the assumption that most of the Boards and Commissions meet once a month. He reported that the three Pensions Boards and the Investment Advisory Board meet quarterly. He said that a person serving on these Boards could miss up to four meetings in a row, depending upon when they fall during the year, and remain on the Board. Attorney Randolph advised that the three-strike rule was not intended to apply to Boards that meet quarterly. Following a discussion, Jane Struder, Director of Finance, proposed that the rule for Boards or Commissions that meet quarterly be two unexcused absences in any twelve-month period would be cause for removal from the Board. There was agreement on the concept.

e. Revisit Restraints on Construction Activities During Season

Dr. Jerome Klein distributed a list of suggestions to assist property owners dealing with construction. A copy of the list was provided for the record. He stated he had been dealing with construction in his neighborhood for four years. He said he would like a Gantt chart (work flow) distributed to all owners in the area of construction. John Page, Director of Planning, Zoning, and Building, expressed concern that requiring contractors to provide the information could be onerous. He reported that his department issues a thousand building permits each year. There followed a lengthy discussion on the time allotted to complete projects, the possibility of further restricting construction from December 1 to April 30, enforcement of construction regulations, posting of a contact person for construction jobs, and a listing of general contractors with experience in the Town. Mr. Page stated that the Town is very concerned about trying to mitigate the effects of construction especially during the season. Mrs. Close stated that people can look up any contractor on the Town's website to find out how many times they had been inspected, whether they were on time, whether the inspections passed or fail, and any comments. Mr. Klein suggested owners be given an approved list or a database of the contractors that had worked in Town with statistics. Chairman Diamond expressed

concern that the Town would be in the business of regulating contractors. Attorney Randolph stated that the homeowner should do their due diligence as opposed to the Town. He advised that any list be simply a statistical list of the contractors who have worked in the Town. He cautioned there could be allegations by contractors that one contractor is favored over another. Mr. Klein asked that the list include the size of the house, the length of time it took for completion and any code violations. He said the list should be given to the owner; not the architect. Mr. Page cautioned that many times the homeowner makes change to the project which may skew the timeframe. Dr. Klein stated that any list of contractors that had done work on the Island would include those that were bad, and that is why the list should include any violations. Mrs. Close reported that anyone can go on to the Town's Eden (software) system and query any construction type, such as single residence, to get all the contracts, contractor names, and permits. She explained that the instructions are included on the Planning and Zoning Department page. She stated that the new Eden system has information going back to October 2008, but older information was available. She further stated that when a contractor is terminated off of a job, the department generally does not receive anything other than the name of the new contractor. Chairman Diamond suggested a listing be developed of contractors since 2008 and the number of jobs they had completed. He explained that the theory would be that the frequent contractors at least have knowledge of the rules and regulations of the Town. He thanked Dr. Klein for his interest and informed him that the full Council would need to approve the recommendation.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business, the Ordinances, Rules, and Standards Committee Meeting of Wednesday, January 25, 2010, was adjourned at 12:02 p.m.

APPROVED:

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William J. Diamond
Chairman

ORS 1-25-11 Backup

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda
Committee Reports

Agenda Title
Public Works Committee Meeting of February 1, 2011.

Presenter
Gail L. Coniglio, President Pro Tem

Supporting Documents
- Report of Public Works Committee Meeting Held on February 1, 2011

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING
HELD ON TUESDAY, FEBRUARY 1, 2011

I. CALL TO ORDER AND ROLL CALL

The Public Works Committee meeting was called to order on Tuesday, February 1, 2011, at 9:30 a.m. in the Town Council Chambers. On roll call, Chair Gail L. Coniglio and Committee Member Richard M. Kleid were present.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

There was none.

IV. REVIEW OF THE PROPOSED FRANCHISE AGREEMENT BETWEEN THE TOWN AND FLORIDA POWER & LIGHT COMPANY FOR PROVISION OF ELECTRICAL POWER AND RELATED SERVICES WITHIN THE CORPORATE LIMITS OF THE TOWN

Thomas Bradford, Deputy Town Manager, introduced Florida Power and Light (FPL) representatives Patrick Bryan, Senior Attorney, and Ethel Isaacs Williams, Area Manager, External Affairs.

On behalf of the Town, Committee Member Kleid thanked Ms. Williams for her assistance in the placement of Centennial banners on FPL light poles.

Mr. Bradford stated that the Town's Franchise Agreement with FPL was entered into in 1981 and would expire March 27, 2011. He further stated that the proposal was for another thirty year Agreement. He reviewed the pertinent sections.

Section 1 Granting and Term of Franchise - *Sets forth the term of the franchise (30 years), defines the non-exclusive electricity related services that may be provided and where those services and facilities may be provided and installed.* Mr. Bradford explained that the language was similar but more specific than the previous Agreement. He said it was made more clear that facilities need to be installed on the outer edges of rights-of-way with reasonable steps taken to not interfere with vehicular, pedestrian, and bicycle traffic. Chair Coniglio questioned the references to non-exclusive rights and the

ability to terminate. Mr. Bradford answered that the franchises were not really non-exclusive but in fact no one else would come in and provide retail electric service. He stated that the terms for termination were specific. Town Attorney John Randolph asked if the 120 day notice for termination was enough time. Mr. Bryan replied that there was a difference between termination of the franchise and termination of service to Palm Beach. He stated that that the franchise was non-exclusive. He explained that FPL had a monopoly in the Town because of state law and state regulations. He stated that at this time no retail competition was lawfully allowed in the state. He further stated that even if the franchise was terminated, FPL would have a statutory responsibility to serve the Town, but the Town wouldn't receive any franchise fees. He said that the Town was agreeing that it would not go into the municipal electric business and serve the residents unless the franchise was terminated. Chair Coniglio asked about extending the 120 day notice. Mr. Bryan responded that FPL had to provide a 90-day notice to the Town if they believe there is something that needs to be cured and the Town had 90 additional days to cure. He added that the language makes it clear that if the Town believes FPL is in error and talking does not rectify the impasse, the Town can legally challenge FPL's determination at any point.

In response to a question from Attorney Randolph, Mr. Bryan stated that the Town is permitted to generate its own electricity, such as solar installations, and can produce its own power to serve a particular Town facility. He further stated that the Town could not take the excess power and sell it to residents or businesses but could sell it to FPL in a net metering program. He reported that the Town is permitted to build a power plant of any kind, such as trash burning or solar installation, and could serve its own facilities or sell that power wholesale back to FPL, if it is a qualifying facility, or to any other utility in the state. A discussion followed on the laws regarding the purchase of wholesale electricity.

Section 2. Facilities Requirements – *Sets forth the conditions associated with location and re-location of FPL facilities in right-of-way easements.*

Section 3. Indemnification of Grantor – *Requires FPL to indemnify and hold harmless the Town and its officers, etc. from claims, including reasonable attorney fees, for any injury, loss of life or property damage from negligence, default or misconduct of FPL, its employees, agents, etc. without any affect on the Town's sovereign immunity.* Mr. Bradford explained that this language was added to make it clear that nothing in this Section affected sovereign immunity. Attorney Randolph said he did not believe that the last sentence in Section 3 was necessary. He said the important language was that the grantor would indemnify the Town from any damages.

Section 4. Rates, Rules and Regulations – *All FPL rates, rules, and regulations shall be pursuant to law or administrative rule applicable to FPL.*

Section 5(a). Franchise Fee, Calculation and Payment – *Currently at 6%, the new franchise fee is proposed at 5.9%. However, the formula employed is also different resulting in an estimated annual increase in revenue of approximately $20,000 per year to the Town.* Mrs. Isaacs Williams explained that the old formula included a lot of allowed expenses that could offset what was paid to the Town. She further explained that the equation had been changed and FPL no longer offset taxes. Mr. Bradford stated that the Town receives utility taxes and the franchise fees from FPL. He said the franchise fees vary based on consumption but are approximately $150,000 to $200,000 a month.

Section 5(b). Grantor's Option to Decrease or Increase the Franchise Fee Percentage Rate – *Allows the Town to increase or decrease the franchise fee not more than once per year in increments of not less than 1%, not to exceed 5.9% or go below 0.9%.* A brief discussion followed on the reason a municipality would choose to reduce the rate.

Section 6. Favored Nations – *Grants to the Town the ability to secure the same franchise fee, along with the same terms and conditions, if any, of any municipality in Palm Beach County that may receive a franchise fee greater than 5.9%, if the municipality granted a higher franchise fee rate has a number of FPL electrical customers equal to, or less than, the amount of FPL electrical customers in Town.* Attorney Randolph questioned why reference was made to the old ordinance. Mr. Bryan answered that it was standard language but could be deleted. It was agreed to delete the reference.

Section 7. Non-Competition by Grantor – *The Town agrees not to engage in the distribution or sale of electrical capacity or energy in competition with FPL, not to participate in a proceeding or contractual arrangement that would obligate FPL to transmit or distribute electrical capacity or energy from a third party to any other retail customer's facilities.*

Section 8(a). Renewable Energy and Conservation – *The parties agreed to work cooperatively in this regard.* Mr. Bradford stated that this Section was added because it was not known to what degree or if the Town would get into the pursuit of renewable energy sources.

Section 8(b). – *The Town may generate electric capacity and energy for its own facilities for its own use, including the use of renewable energy sources.* Mr. Bryan stated that a resident could also generate electricity for his/her own use.

Section 9. Competitive Disadvantage; Termination by Grantee – *Allows FPL to terminate the Franchise Agreement after having given the Town 90 days notice of intent to terminate if FPL determines the terms and conditions granted by the Town in another electric franchise agreement are more favorable than those contained within this FPL Franchise Agreement.* Mr. Bryan said that this provision was added because this is a long

term Agreement. He explained that if the law changes to allow retail competition in Florida, other electric service providers could come in and the Town could enter into a franchise with that provider. He said that FPL would then ask that it be treated equally with their franchise rate, that the new provider would not be given a lower franchise rate.

Section 10. Legislative or Regulatory Action – *Allows FPL to terminate the franchise within 120 days after providing notice to the Town of the existence of a competitive disadvantage created by a law or regulation of the USA or Florida if the Town cannot remedy the competitive disadvantage within 120 days of receipt of FPL notice.* Attorney Randolph expressed concern with the 120 day time period. He asked if the Town would continue to receive service. Mr. Bryan responded that if the franchise was terminated by FPL the Town would continue to receive service but would not receive the franchise fee. He explained that it was 120 days notice and 120 days to cure plus the Town would have the right to legally challenge FPL's determination of competitive disadvantage.

Section 11. Default by Grantee; Forfeiture – *If FPL fails to perform the Town may cause FPL to forfeit the franchise, but if protested by FPL, the forfeit will not be valid until six months following expiration or exhaustion of any appeal.* Committee Member Kleid stated that six months seemed like a long period and asked if it could be the same 120 day provision as the in the other Section. Mr. Bryan responded that the provisions in Sections 8 and 9 are not default provisions. He suggested that the only time the Town would want to terminate the franchise would be if it wanted to form a municipal electric company. Committee Member Kleid stated that the appeal could take months and FPL was asking for an additional six months after that time. Mr. Bryan replied that the parallel provision to Section 11 was Section 12. He stated that FPL did not have the right to terminate based on default by the Town but did have the right to withhold franchise fees for a period time. He offered to add "through all appeals" so it would be more parallel to Section 12. There was consensus to add the language.

Section 12. Default by Grantor – *The Town defaults for denying use of public right-of-way contrary to the Franchise Agreement, imposing conditions on right-of-way use contrary to Florida law or the Franchise Agreement and unreasonable delay in permit issuance to construct FPL facilities in right-of-way. FPL can withhold franchise fee payments to the Town until the permit is issued or the court makes a final determination.*

Section 13. Grantor's Right to Audit - *The Town may audit once per year the calculation of the franchise payment for the proceeding year subject to the conditions of this section, including that the Town may not use a third party for such audits whose fee is contingent on the findings of the audit.* Chair Coniglio asked if the Town would receive accurate figures. Mr. Bryan responded that FPL's customer account records were maintained as confidential but for purposes of audits FPL provides computer records with premises numbers and addresses.

William Diamond, 220 Wells Road, ask if there was any relationship between possible future undergrounding and the Franchise Agreement. Mr. Bradford replied that the subject of undergrounding would be included in a proposed letter of intent. He stated that there was nothing in the Agreement that would be an impediment to undergrounding.

Attorney Randolph read the last sentence in Section 13: "Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 4-81." He said he believed it was included to insure that as the Town goes forward, it settles any and all disputes under Ordinance No. 4-81 and any audit would relate to the ongoing franchise. He asked if Town staff had reviewed the fees paid under Ordinance No. 4-81 and if they were comfortable waiving any claims in regard to the past franchise. Mr. Bradford responded that there had been an aberration in 2009 and the Finance Department had worked with FPL to satisfy it. Attorney Randolph advised that the Town needed to be sure it was not owed anything under the old franchise. Mr. Bryan explained why the provision was included in the Agreement saying the franchise fees in the past were technically a written Agreement and there were five years under the statute of limitations to bring a claim. He said that FPL wanted to encourage a quick resolution if there are any claims. He reported that in other franchises FPL had agreed to language that says all claims under the old franchise are waived if not asserted in writing within one year. He explained that receiving it in writing would preserve the claim for the five year statutory period. He stated that FPL wanted language that creates an incentive for the Town to resolve the claim. Attorney Randolph stated that without the language under the statute of limitations the Town would have five years. He proposed the FPL language with two years. Mr. Bryan responded that he had proposed the Town would have one year to put FPL on notice of the claim and then the five year statutory period would apply to the claim. Committee Member Kleid stated that the Town would be waiving its statutory five year statute of limitations in return for whether it discovers an issue within one year. Attorney Randolph recommended the committee not accept the language in the Agreement and negotiate some better language. Mr. Bryan said he would go back to management and ask.

Sections 14-Section 18 – *Each of these sections are fairly common ordinance conclusion sections with the exception of Section 15 which makes every provision interdependent as opposed to severable and Section 18 which requires FPL to file an acceptance letter with the Town on the form found in Exhibit A to the Franchise Agreement ordinance within 30 days of adoption so that the record will reflect FPL acceptance.* Committee Member Kleid questioned Section 15 saying he did not have much experience with a provision that if one Section is invalid it vitiates the entire Agreement. Mr. Bryan explained that this was a simple Agreement to say that for as long as FPL serves the Town, the Town agrees not to compete by forming a municipal electric company and, in return, the Town will receive a franchise fee. He stated that there were a few provisions in the Agreement that if deemed to be invalid there would be no reason for one side or the other to continue in the relationship. He reported that in other franchises the substantive provisions had

been distinguished and a "hybrid" severability provision added. Committee Member Kleid suggested the language be limited to certain provisions. Attorney Randolph agreed saying that if one provision, such as the indemnity provision, is challenged and removed, the Town would still want the remainder of the Agreement to remain. Mr. Bryan proposed a hybrid that would include the following non severable provisions: the franchise fee payment, the non-compete, the level playing field, and the default provisions. Following further discussion, there was consensus from the Committee that Section 15 should be completely removed and a pure severability provision added. Mr. Bryan stated he would go back and ask management. Mrs. Isaacs Williams asked that if they were unable to remove the Section, that the process continue to move forward and they would come back with a more delineated clause. The Committee members agreed. Chair Coniglio asked that FPL be mindful of the sections for which the Town completely disagreed.

Operational Issues – Mr. Bradford addressed two operational issues: underground utilities and hardening, and vegetation management. He stated that he did not believe they should be included in the Franchise Agreement. He reported that FPL was willing to include a letter of intent that they agree to work cooperatively with the Town relative to underground utilities and hardening. He explained the hardening issue and spoke about some of the issues that had occurred in Town as a result of FPL's hardening efforts. He stated that if FPL informs the Town of a hardening project with sufficient notice and a copy of their annual site plan, then the Town could notify the residents. He further stated that if a resident is not pleased with hardening the only real alternative is to convert to underground utilities. He reported that the terms for underground services are included in the Public Service Commission (PSC) tariffs. Attorney Randolph asked, based on the past experience with underground utilities issues, if the Committee was comfortable with not putting any of the undergrounding or hardening language in the Franchise Agreement. He referred to Section 1 of the Agreement and expressed concern that FPL could say that their customary practice was not to do undergrounding in a particular location. Mr. Bryan responded that the Franchise had no bearing on the tariff or the PSC rules with respect to undergrounding. He suggested including a sentence in the Agreement with respect to undergrounding or all other services that this does not affect the tariff or the PSC rules in any way. There was consensus on Mr. Bryan's suggestion.

Mr. Bradford reported that after the storms (2004 and 2005) FPL began to have a more systematic and organized vegetative management plan. He stated that FPL had said they would try to provide the designated person in the Town notice of the work. Paul Brazil, Director of Public Works, suggested the Town formalize what FPL had actually doing because it is successful. He stated that right-of-way permits are necessary, coordination meetings are necessary, and some conversation regarding one year cuts versus three-to-five year cuts and where it might be more appropriate. Mrs. Isaacs Williams clarified that the process had not been codified but was a practice that had improved over time. She stated that vegetative maintenance was one of the most sensitive areas within any utility company. Following further discussion, it was agreed that Mr. Brazil and Mrs. Isaacs

Williams would get together and codify the procedure. Mr. Bradford asked that to keep the process moving, the vegetative management language in the letter of intent be summarized to read that the Town and FPL agree to work cooperatively to come up with processes and procedures that will ultimately be in the Town's right-of-way manual. Mr. Brazil and Mrs. Isaacs Williams agreed that not including language in the Franchise Agreement would provide them with the time to get it right.

Clerk's Note: The next item discussed was V. Any Other Matters.

Attorney Randolph stated he may come back at the Town Council meeting with a suggested change regarding the inclusion of the sovereign immunity sentence. He said he would meet with staff and the FPL representatives. Mr. Bryan responded that FPL would agree to delete the sentence.

Regarding non-competes and the use of other service providers, Chair Coniglio asked if the Town had ownership of the electric lines and equipment. Mr. Bryan responded no, that the Town would have to purchase, condemn, or require FPL to tear down the poles and the Town would have to build their own. Mrs. Isaacs Williams added that FPL pays taxes on part of the infrastructure. Attorney Randolph asked if there had been discussion during the negotiations that at the conclusion of the Franchise Agreement the Town would have the right to purchase the facility. Mr. Bryan stated that buy out provisions in years past were required by law. He reported that the statute that required those provisions was repealed in 1973 and since that time it had been FPL's practice not to offer it in their franchises. Mr. Bradford stated that if the Town wanted the facility, it could condemn it which wasn't easy and was costly. Mr. Bryan said that FPL was not inclined to offer a buy-out provision. Chair Coniglio said she would like to have a buy-out provision brought back to the table because it was important to protect the residents. Mr. Bryan responded that he would take it back to management.

Mrs. Isaacs Williams noted that the current franchise expires March 27, 2011, and would require two readings as an ordinance. She asked if she should get something back to Mr. Bradford by the end of the week so the Agreement would stay on the time table of a February and March meeting. Chair Coniglio said she wanted to be sure that the Town was comfortable with any changes and did not want to miss anything that needed to be addressed. Mr. Bradford proposed that in his memorandum for the February 15 meeting he would include the issues discussed at the Committee meeting and FPL's response or outcome of the discussions. Committee Member Kleid added that the ordinance would be drafted initially in accordance with what the Committee had received as modified and by what had been agreed to between the Town and FPL. Attorney Randolph stated that if the Town and FPL were not able to complete the Agreement by March, FPL would continue to service the Town because it is statutorily obligated to so. He asked if FPL would collect the franchise fee. Mr. Bryan responded that FPL would discuss it with the Town. He stated that the law requires that if the parties need more time to negotiate in good faith, FPL has an obligation to continue paying the franchise. He stated that if FPL knows

it can't agree and further negotiations would not be fruitful, at a certain time FPL would stop making the payments.

Mr. Bryan stated he would prepare a new redline draft with the changes that had been agreed to and he would go back to management on the other issues to see what is possible.

V. ANY OTHER MATTERS

Committee Member Kleid spoke about street lights. He proposed that the police department report the lights out because it is part of their patrol area and an enforcement issue. Mr. Brazil explained that there are three different responsibilities for street lights: Town owned lights, Department of Transportation (DOT) owned lights, and FPL owned lights. He stated that the Town takes care of and is reimbursed for the DOT lights and FPL is responsible to maintain their own. He said if Public Works is contacted about a light out, they will know who is responsible. Committee Member Kleid again stated that a police officer should be cognizant of any lights being out, what entity is responsible for it, and to report it. Chair Coniglio asked staff to coordinate the effort.

Clerk's Note: Following the discussion of street lights, the Committee continued the discussion of the Franchise Agreement.

VI. ADJOURNMENT

There being no further business, the Public Works Committee meeting of Tuesday, February 1, 2011, was adjourned at 10:53 a.m.

APPROVED:

_____
Gail L. Coniglio
Chair

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - Old Business

Agenda Title

Recommendation to Demolish the Casa Bendita Gazebo.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 2, 2011, from H. Paul Brazil, Director of Public Works.

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Casa Bendita Gazebo

Date: February 2, 2011

STAFF RECOMMENDATION

Town staff recommends Town Council authorize demolition of the gazebo and appropriate an amount not to exceed $25,000 from the General Fund Contingency for demolition and site restoration.

GENERAL INFORMATION

The Town owns a gazebo within the road right-of-way on Casa Bendita. The gazebo is a remnant of the estate that predated the existing subdivision. The gazebo is in poor condition and requires substantial reconstruction. Town staff had previously hired Bridges, Marsh & Associates to perform an evaluation of the Casa Bendita Gazebo to determine a budget estimate for reconstruction. A total estimated project cost of $146,000 was developed.

The Town Council considered this issue previously at the May 11, 2010, Town Council meeting, and decided to defer the decision to allow the residents to return and be present for consultation. Since then, the Preservation Foundation of Palm Beach has been in contact with residents and they have informed Town staff that there is no consensus to retain and reconstruct the gazebo. Demolition of the deteriorated structure is recommended, since the residents have expressed no significant desire to reconstruct it and no funding or donation has been identified to do so.

A local landscape contractor has been working with some of the residents to develop a landscape plan for the street. Due to uncertainty on future landscape improvements, the existing area would be restored with a maintenance-free material such as gravel for the short-term. It is requested that a budget of $25,000 be established as a "not-to-exceed" amount for the demolition and temporary restoration.

Individual letters to the ten affected neighbors on Casa Bendita were hand delivered during the week of February 7, 2011, notifying them that the Mayor and Town Council will discuss the above outlined recommendation for dealing with the gazebo. All residents were invited to attend the February 15, 2011, Town Council meeting to provide feedback and/or to contact Public Works prior to the meeting.

FUNDING/FISCAL IMPACT

As recommended above, staff believes the cost of demolition and site restoration will not exceed $25,000, with funding to come from the General Fund Contingency account.

HPB:nb

cc. Jane Struder, Director of Finance
Eric B. Brown, Assistant Director of Public Works
Ed Armstrong, Parks/Streets Supervisor
Alexander Ives, Preservation Foundation

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

County Budget Task Force Request Items.

1. RESOLUTION NO. 11-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging All Palm Beach Citizens and the Elected Officials and Leadership of Various Palm Beach County Governmental Bodies to Do All Things Within Their Power to Bring the Palm Beach County Sheriff's Office and the Palm Beach County School District under the Oversight of the Office of Inspector General to Facilitate Prudent and Restrained Budget Governance with Reduced Fraud and Waste; Setting Forth Instructions for Distribution of this Resolution; Providing an Effective Date.
2. Request to Town Council for New Mayor Gail Coniglio to Fight Any Weakening of the Voter Approved Inspector General Ordinance.
3. Request to Town Council for Continuation of the Task Force and its Work and Any New Direction for the Coming Year.
4. Request to Town Council to Fill a Vacancy on the County Budget Task Force Due to a Resignation.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated January 28, 2011, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 11-11

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Requests of the County Budget Task Force for Town Council Consideration
Resolution No. 11-11

Date: January 28, 2011

STAFF RECOMMENDATION

The County Budget Task Force (Task Force) has requested that the Town Council adopt a resolution to be sent to various pertinent governmental bodies urging the inclusion of the Palm Beach County Sheriff's Office and the Palm Beach County School District under the domain of the Office of the Inspector General approved by voters countywide in November 2010. Staff has prepared Resolution No. 11-11 to accommodate the request of the Task Force.

The Task Force has asked that the Town Council consider three other requests as well. Each request is enumerated below.

GENERAL INFORMATION

The County Budget Task Force was created by the Town Council on May 11, 2010, with the adoption of Resolution No. 55-10. The purpose of the Task Force is:

- Monitor the Palm Beach County budget
- Encourage fiscal responsibility by County officials
- Advise the Town Council in matters relating to the Palm Beach County budget
- Make recommendations in regard to the Palm Beach County budget

At their meeting January 24, the Task Force by appropriate motions requested that the following items be presented to the Town Council for their consideration:

1) The Task Force recommends to the Town Council that the Town Council take appropriate steps to cause the Palm Beach County School District, and the Palm Beach County Sheriff's Office to be placed under the oversight of the newly created Office of Inspector General. The Office of Inspector General was established to provide independent oversight of publically funded transactions, projects, and other local government operations for Palm Beach County and the 38 municipalities therein, with other Palm Beach County based governmental

agencies allowed to be added to the Inspector General's oversight via an Interlocal Agreement with the County. The Palm Beach County School District and the Palm Beach County Sheriff's Office are not currently under the oversight of the Office of the Inspector General. In the event the Town Council is amenable to implementing the request of the Task Force, to better memorialize this position and to help standardize the message that is transmitted to others, a formal resolution (Resolution No. 11-11) has been prepared and is attached hereto for your consideration.

2) The Task Force requests that the work of the Task Force be continued by the Town Council and any new direction be provided to the Task Force for the coming year. Per Resolution No. 55-10 the Task Force is dissolved at such time as the Town Council determines that the Task Force has completed its work. The Task Force members do not feel they have completed their work.

3) Ethics Ordinance Drafting Committee – The Task Force is concerned that this committee which was created to develop the ordinances to enable the voter approved Charter Amendment is attempting to water down the provisions of the enabling ordinance. The Task Force recommends that new Mayor Gail Coniglio in her capacity as official Town representative in meetings or hearings before elected officials of other governmental bodies fight any weakening of the voter approved Inspector General ordinance.

4) Task Force Appointment – At their last meeting the Task Force formally thanked Jack McDonald for his efforts in the creation of the Task Force and for his service as Chair of the Task Force. In accordance with Resolution No. 55-10, as the Town's new Mayor, Mrs. Coniglio shall now serve as Chair of the Task Force. In 2010, Stuart Schulman resigned from the Task Force to devote his attention to family matters. If you recall, each member of the Town Council was given one appointment to the Task Force. Stuart Schulman was appointed by Council President David Rosow. Mr. Rosow is not required to make his appointment at a public meeting, he can notify me of his appointment when ready, but the Task Force has requested that an appointment be made to give them a full complement of members to tackle their assignment.

FUNDING/FISCAL IMPACT

There are no direct costs attributable to the requests of the Task Force except for staff time in preparing related materials and incidental costs that are considered de minimis.

TOWN ATTORNEY REVIEW

Resolution No. 11-11 has been approved by the Town Attorney for legal form and sufficiency.

cc: John C. Randolph, Town Attorney

N\TGB\2011\ Agenda Items\County Budget Task Force Requests of Town Council 021511 TCM

RESOLUTION NO. 11-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, URGING ALL PALM BEACH CITIZENS AND THE ELECTED OFFICIALS AND LEADERSHIP OF VARIOUS PALM BEACH COUNTY GOVERNMENTAL BODIES TO DO ALL THINGS WITHIN THEIR POWER TO BRING THE PALM BEACH COUNTY SHERIFF'S OFFICE AND THE PALM BEACH COUNTY SCHOOL DISTRICT UNDER THE OVERSIGHT OF THE OFFICE OF INSPECTOR GENERAL TO FACILITATE PRUDENT AND RESTRAINED BUDGET GOVERNANCE WITH REDUCED FRAUD AND WASTE; SETTING FORTH INSTRUCTIONS FOR DISTRIBUTION OF THIS RESOLUTION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, property owners in the Town of Palm Beach and all other property owners in Palm Beach County pay disportionately high levels of property taxes for the operation of Palm Beach County government and the Palm Beach County School District; and

WHEREAS, a large percentage of the Palm Beach County general operating budget and the resulting tax rate is directly related to the operations of the Palm Beach County Sheriff's Office; and

WHEREAS, the Town Council believes that the Palm Beach County Sheriff's Office and the Palm Beach County School District budget governance must be prudent and restrained and elected officials must review past decisions for sustainability without large future tax increases; and

WHEREAS, in November 2010 the voters of Palm Beach County, including those residing in the 38 municipalities in Palm Beach County, voted overwhelmingly to amend the Charter of Palm Beach County to establish a countywide code of ethics, an independent commission on ethics and an independent Office of Inspector General; and

WHEREAS, the Office of Inspector General is to provide independent oversight of publicly funded transactions, projects and other local government operations; and

WHEREAS, placing the Palm Beach County Sheriff's Office and the Palm Beach County School District under the oversight of the Office of Inspector General will ultimately facilitate the deliverance of budget governance that is both prudent and restrained and will also root out fraud, waste, malfeasance, misfeasance, theft and other illegal acts to the extent that such exists.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, AS FOLLOWS:

Section 1. The foregoing recitals are hereby ratified and confirmed.

Section 2. The Town Council of the Town of Palm Beach hereby urges all of its citizens, the Palm Beach County Legislative Delegation, the Palm Beach County Board of County Commissioners, the School Board of the Palm Beach County School District, the Sheriff of Palm Beach County, the Commission on Ethics, the Ethics Ordinance Drafting Committee, the Palm Beach County League of Cities and the elected officials of each municipality in Palm Beach County to do all things within their power to bring the Palm Beach County Sheriff's Office and the Palm Beach County School District under the oversight of the Office of Inspector General.

Section 3. The Town Clerk, or her designee, is hereby directed to provide a copy of this resolution to the members of the Palm Beach County Legislative Delegation, the members of the Palm Beach County Board of County Commissioners, the members of the School Board of the Palm Beach County School District, the Sheriff of Palm Beach County, the members of the Commission on Ethics, the members of the Ethics Ordinance Drafting Committee, the Palm Beach County League of Cities and the elected officials of each municipality in Palm Beach County.

Section 4. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of February, 2011.

Gail L. Coniglio, Mayor	To be determined on 2/15/11, Town Council President
	To be determined on 2/15/11, Town Council President Pro Tem
	, Town Council Member
ATTEST:	, Town Council Member
Cheryl Somers, Acting Town Clerk	, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

Recreation Advisory Commission Recommendations Regarding Privatization Studies for the Recreation Center and Tennis Facilities.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated February 7, 2011, from Jay Boodheshwar, Director of Recreation and Special Projects and Danielle Moore, Recreation Advisory Commission Chairperson
- Minutes from the January 5, 2011, Recreation Advisory Commission Meeting

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects
Danielle Moore, Recreation Advisory Commission Chairperson

Re: Recommendations of the Recreation Advisory Commission Regarding Privatization of the Recreation Center and Tennis Facilities

Date: February 7, 2011

STAFF RECOMMENDATION

Staff recommends that Town Council review the final recommendations of the Recreation Advisory Commission (RAC) regarding the results of the privatization studies for the Recreation Center and Tennis Facilities and provide direction as necessary.

GENERAL INFORMATION

At the July 13, 2010, Town Council meeting, staff was directed to study various privatization options for the Recreation Department and to also analyze current department operations to identify more cost effective methods for delivering recreational services to the community.

Privatization Study Timeline

At the September 1, 2010, RAC meeting, staff engaged with the Recreation Advisory Commission to complete this task. Four study groups were formed to analyze operations of the Town Docks, Par 3 Golf Course, Recreation Center, and Tennis Facilities, which were comprised of residents, staff, and members of the RAC. Members of the Study Groups included:

Town Docks: RAC Chair Mrs. Danielle Moore, Mr. Daniel McDonnell, Mrs. Pamela McIver, Mr. Leo Vecellio, Mr. William Miller, Director Mr. Jay Boodheshwar, and former Dockmaster Mr. Jon Luscomb

Golf Course: RAC Chair Mrs. Danielle Moore, Mr. Steven Hall, Mr. Timothy O'Hara, Mr. Scotch Peloso, Ms. Kellie Stenzel, Mr. Stuart Shulman, Director Mr. Jay Boodheshwar, and Assistant Director Mr. Alan Brown

Recreation Center: RAC Chair Mrs. Danielle Moore, Mr. Chris Storkerson, Mr. Donald Singer, Mr. Larry Siedlik, Director Mr. Jay Boodheshwar, and Assistant Director Mr. Rod Gardiner

Tennis Facilities: RAC Chair Mrs. Danielle Moore, Dr. Joseph Della Giustina, Dr. Ellen Howe, Mr. Henry Jamison, Mrs. Suzanne Ainslie, Mr. Michael Spaziani, Director Mr. Jay Boodheshwar, and Assistant Directors Mr. Alan Brown and Mr. Rod Gardiner

The Study Groups met between September 24 and November 1, 2010, to complete thorough reviews of facility operations, policies, staffing, and budgets, and discussed options for privatizing either specific functions or entire facilities. The first round of each Study Group meeting began with a presentation that included an overview of the Recreation Department, its history, organizational structure, policies and procedures, the FY2011 budget, the long-term financial plan, and the department's capital improvement schedule. It also included a brief review of each individual facility being studied, including their specific program budgets, staffing levels, fees, and participation.

A presentation regarding the question of privatization was also provided, in the context of the Town's current financial challenges. It was summarized that the question of privatization of recreational facilities had been posed to determine if subsidy levels of certain programs could be reduced or eliminated to assist in the generation of additional funds for transfer to the General Fund for broader Town use. General information regarding the more popular privatization models that are used by municipalities were provided to the Study Groups, including asset sales, use of management companies, short-term/long-term leasing, and contracting out. The general pros and cons for these privatization approaches were reviewed and discussed by each group.

A special RAC meeting was held on October 6, 2010, to review the initial results of the first round of privatization study group meetings. At this meeting, the RAC unanimously approved the recommendations made by the Docks Study Group at its September 24, 2010, meeting to cease from exploring privatization options and requested that staff continue to develop a long term capital improvement plan as well as further development of services to make sure that the Docks remain competitive and successful. No actions were taken regarding the Tennis Facilities, Recreation Center, and Par 3 Golf Course Study Groups at the October 6 special meeting. These three groups continued to meet to determine what their recommendations to the RAC would be.

At the November 3, 2010, RAC meeting recommendations from the Recreation Center, Tennis, and Golf Study Groups were provided to the RAC. Along with the ratification of the October 6, 2010, recommendation regarding the opposition to privatization of the Town Docks, the RAC also approved the recommendations from the Golf Study Group. The RAC recommended that the timeline for completing the privatization study be accelerated for the Town Docks and Par 3 Golf Course due to the unexpected resignation of the former Dockmaster and retirement of former Golf Pro/Manager. The Town Council approved these recommendations at its November 9, 2010, meeting.

Although the RAC also reviewed the initial findings of the Tennis Facilities and Recreation Center Study Groups at its November 3, 2010, meeting, it was decided to continue reviewing these two facilities on their original timeline. This allowed the RAC to continue working with staff to fine tune the staffing reduction, revenue enhancement, and program improvement plans for these two areas before a final presentation is provided to the Mayor and Town Council.

At the January 5, 2011, RAC meeting the results from the Recreation Center and Tennis Study Groups were provided for consideration. The RAC unanimously approved the recommendations

from the Recreation Center and Tennis Facilities Study Groups, which included the following:

Recreation Center
1. Maintain the current staffing model and reject the privatization of management for this facility.
2. Focus on expanding program offerings and overall revenues.
3. Develop a website specifically for the Recreation Department with possible online registration and develop a comprehensive marketing plan for the department.
4. Upon the completion of the privatization study, approach the school district to seek cost sharing for the upkeep of the athletic field.
5. Approach local businesses/organizations for corporate underwriting of community events and activities to help reduce the cost of these events on the budget.
6. Eliminate the maintenance worker position through attrition or transfer to another department and contract out these responsibilities at a future date.

Tennis Facilities
1. Reject privatization of management of the tennis facilities but modify future staffing models to increase cost recovery percentages.
2. The short term goal would be to change the cost recovery policy from 30% to 55% by eliminating the Tennis Facility Assistant position through attrition or transfer to another department.
3. The long term goal is to have a model with one full time Facility Supervisor, one permanent part time Facility Supervisor and one full time Tennis Maintenance Worker position. This would effectively result in the achievement of a 70% recovery and a 40% reduction of staffing. This model should also be achieved through attrition or transfer and not through layoffs.
4. It was determined that a 100% cost recovery model was not desirable due to the significant staff reduction that would be required, as well as a substantial increase in fees.

The RAC has requested that Town Council support the conclusions and recommendations for the Recreation Center and Tennis Facilities as presented.

Golf Manager and Dockmaster Recruitment Status
The recruitment process for the new Golf Manager has been completed. The selection committee chose Tony Chateavert as the top candidate after a thorough qualifications-based evaluation process. Mr. Chateavert will leave his position at the Yacht and Country Club in Stuart, Florida, to join the Town in late February. He has previously held a variety of positions at a number of golf facilities, including Inverness Golf Club (Inverness, IL), Bedford Golf and Tennis Club (Bedford, NY), Loblolly (Hobe Sound, FL), and Clearview Golf Club (Bayside, NY). He has also worked for PGA Magazine as the Director of Event Marketing.

The recruitment process for the new Dockmaster is well underway. This process is expected to be completed by early March.

SPECIAL CONSIDERATIONS

Since the January 5, 2011, RAC meeting, there have been two unexpected staff resignations, which will result in an unplanned decrease of staffing levels for FY2012. The General Maintenance Worker will retire in mid-March. This position was identified as one that would not be replaced once it became vacant. The Phipps Tennis Facility Supervisor has also resigned,

effective on January 28. Staff is currently finalizing a plan to redistribute the responsibilities of these two positions among other full-time staff, and relying more on part-time/contractual employees to fill any gaps. These reductions will bring us very close to the long term staffing model recommendation for the Tennis Division and will achieve the staff reduction plan for the Recreation Center much sooner than originally anticipated.

Please note that the current full-time staffing count for the Recreation Department stands at 18.25, which is 18% less than in 2006. The FY2012 staffing level is expected to be at 16.25 and the long-term model at 14.50, which is 35% less than the 2006 levels.

FUNDING/FISCAL IMPACT

The recommendations outlined above are expected to realize a savings of approximately $162,000 in full-time staff expenses for FY2012, with a net savings of $144,000 after the addition of part-time staff to off-set some of the responsibilities of the eliminated positions. The long-term staff reduction plan will realize an additional net savings of approximately $141,000 in full-time staffing expenses.

Recommended Long-Term Staffing Model

Name	Docks	Golf	Tennis	Rec Ctr	Admin	Total
Dock Attendants	1.50	0.00	0.00	0.00	0.00	1.50
Dockmaster	1.00	0.00	0.00	0.00	0.00	1.00
Tennis Facility Assistant	0.00	0.00	1.00	0.00	0.00	1.00
~~Tennis Facility Supervisor (Phipps)~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~
Tennis Facility Supervisor (Seaview)	0.00	0.00	1.00	0.00	0.00	1.00
Tennis Maintenance Worker	0.00	0.00	0.50	0.50	0.00	1.00
~~General Maintenance Worker~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~
Recreation Supervisor (Programs/Camps)	0.00	0.00	0.00	1.00	0.00	1.00
Recreation Supervisor (Athletics)	0.00	0.00	0.00	1.00	0.00	1.00
~~Golf Equipment Operator~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~
Golf Mechanic	0.00	1.00	0.00	0.00	0.00	1.00
Golf Facility Supervisor	0.00	1.00	0.00	0.00	0.00	1.00
Golf Manager	0.00	1.00	0.00	0.00	0.00	1.00
Golf Superintendent	0.00	1.00	0.00	0.00	0.00	1.00
Assist. Director/Rec Center & Tennis	0.00	0.00	0.25	0.25	0.50	1.00
~~Assist. Director/Golf & Docks~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~	~~0.00~~
Dept. Office Manager	0.00	0.00	0.00	0.00	1.00	1.00
Director of Recreation	0.00	0.00	0.00	0.00	1.00	1.00
Staffing Totals	**2.50**	**4.00**	**2.75**	**2.75**	**2.50**	**14.50**

cc: Recreation Advisory Commission
Recreation Center Study Group Members
Tennis Facilities Study Group Members

TOWN OF PALM BEACH
RECREATION DEPARTMENT

MINUTES OF THE RECREATION ADVISORY COMMISSION
HELD ON WEDNESDAY, JANUARY 5, 2011

I. CALL TO ORDER, ROLL CALL & PLEDGE OF ALLEGIANCE

A meeting of the Town of Palm Beach Recreation Advisory Commission was held on January 5, 2011, at Town Hall in Council Chambers. The meeting was called to order by Chairwoman Mrs. Danielle More at 9:00 a.m. Commission members in attendance were Mrs. Danielle Moore, Mr. Joseph Della Giustina, Mr. Stephen Hall, Mr. Henry Jamison, Mr. Daniel McDonnell and Mr. Donald Singer. Alternate members in attendance were Mrs. Pamela McIver, Dr. Ellen Howe and Mr. Chris Storkerson. Absent from the meeting was Mr. Timothy O'Hara. Staff members in attendance were Director Mr. Jay Boodheshwar, Assistant Directors Mr. Alan Brown and Mr. Rod Gardiner and Office Manager Mrs. Lisa Walkowich.

II. PLEDGE OF ALLEGIANCE

III. COMMENTS OF THE RECREATION ADVISORY COMMISSIONERS

Mrs. Moore welcomed the commissioners and wished everyone a Happy New Year. She asked if there were any comments from the commissioners. There were none.

IV. COMMUNICATIONS FROM CITIZENS

Mrs. Moore asked if there were any comments from the citizens attending the meeting, there were none.

V. APPROVAL OF AGENDA

Mrs. Moore asked if there were any changes to the agenda, there were none. Mrs. Moore asked for a motion to approve the agenda. Mr. Della Giustina made the motion to approve the agenda, seconded by Mr. McDonnell, all were in favor.

VI. APPROVAL OF NOVEMBER 3, 2010, MEETING MINUTES

Mrs. Moore asked if there were any changes to the November 3, 2010, meeting minutes. Mrs. McIver stated that she had been quoted as saying that we should tap into the resources of the community as we look into the privatization issues. She said "What I had said was that it seems that a common denominator among all of the groups that we looked at was the issue of marketing and we should look to the community and work together in some sort of a public/private grouping to study that issue." The second item was in the proposal from Camper Nicholson, she said that she stated that we should keep them in mind as we look at a

long term plan, and should consider using them as a consultant in the future if deemed appropriate. She asked that the minutes be amended. Mr. Della Giustina made a motion to approve the November 3, 2010 minutes as revised, seconded by Mr. McDonnell, all were in favor.

VII. OLD BUSINESS

A. Update on Recruitment of Golf Manager and Dockmaster - Mr. Boodheshwar reported that the hiring process for Golf Manager and Dockmaster positions is committee based and will include the review and rating of applications received and subsequent interviews of the finalists.

He said that changes were made to both job descriptions to be more effective for the department. He said that the golf manager position which was originally a hybrid position that included a supplemental agreement for lessons and merchandise has been changed to strictly an administrative position. He said that the Town has taken over the merchandising and has temporary agreements with the golf instructors for this season. Mr. Boodheshwar said that later this year a RFP will be issued for teaching services, similar to the one that was issued for teaching services in the tennis division.

Mr. Boodheshwar said that the Dockmaster position description was revised, putting more focus on the "hands on" and customer services aspects of the position. He said the pay scale of the position was also slightly reduced. He said that the administrative responsibilities of the Marina will continue to fall under the Assistant Director of Recreation.

B. Privatization Study Recommendations for Tennis and Recreation Center – Mr. Boodheshwar summarized the conclusions of the Tennis and Recreation Center study groups. These conclusions are as follows:

Recreation Center

1. Maintain the current staffing model and reject the privatization of management for this facility.
2. Focus on expanding program offerings and overall revenues.
3. Develop a website specifically for the Recreation Department, with possible online registration, and develop a comprehensive marketing plan for the department.
4. Upon the completion of the privatization study, approach the school district to seek cost sharing for the up keep of the athletic field.
5. Approach local businesses for corporate underwriting for community events and activities to help reduce the cost of these events on the budget.
6. Eliminate the maintenance worker position through attrition or transfer to another department and contact out these responsibilities at a future date.

Mrs. Moore asked if there was any discussion on these items. Mr. Singer stated that he was receiving the weekly emails from the department and commended staff on the great job they were doing.

After further discussion Mr. Singer made the motion to approve the recommendations of the Recreation Center Privatization Study Group as outlined in Mr. Boodheshwar's report. Seconded by Mr. Della Giustina, all were in favor.

Tennis Facilities

1. Reject privatization of management of the tennis facilities but modify future staffing models to increase cost recovery percentages.
2. The short term goal would be to change the cost recovery policy from 30% to 55% by eliminating the Tennis Facility Assistant position through attrition or transfer to another department.
3. The long term goal is to have a model with one full time Facility Supervisor, one permanent part time Facility Supervisor and one full time Tennis Maintenance Worker position. This would effectively result in the achievement of 70% cost recovery and a 40% reduction of staffing. This model should also be achieved through attrition or transfer and not through layoffs.
4. It was determined that a 100% cost recovery model was not desirable in order to maintain the quality of the facilities that the residents require.

After further discussion Mr. Della Giustina made the motion to approve the recommendations of the Tennis Privatization Study Group as outlined in Mr. Boodheshwar's report. Seconded by Mr. Singer all were in favor.

VIII. NEW BUSINESS

A. Volunteer Marketing Committee - Mr. Boodheshwar stated that at the November 3, 2010, Commission meeting there was a strong suggestion from that staff look to draw from the expertise of this community relative to marketing and advertising. There was a subsequent article in the Palm Beach Daily News where Mrs. Moore asked the community for volunteers to form a marketing committee. Mr. Boodheshwar stated that there was a tremendous response and on November 22, 2010, the committee met for the first time. The committee members are; Dr. Michael Andrews, Mrs. Clare Bendeck, Mr. Gregg Bennett, Mrs. Etonella Christlieb, Mr. Ed McLaughlin, Ms. Sally Ann Nisberg, and Mrs. Jan Willinger. He said that Mrs. McIver was the Recreation Commission representative.

Mr. Boodheshwar stated that at the first meeting, staff provided a quick presentation to the committee on how we currently marketed the different facilities and it was decided that a comprehensive plan and branding for the department was needed. He said that some of the initiatives that were discussed with the Recreation Advisory Commission have already been implemented such as the weekly blast e-mails. In addition, staff created a power point presentation that is scrolling on cable access channel 18 and new evening classes for adults are being offered this season.

Mr. Boodheshwar stated that the Marketing Committee will be meeting again on January 7, 2010. He said that the committee members will bring back information on how to proceed with this comprehensive marketing plan, which could include the development of a department logo and slogan, defining who our markets are for each division and defining the objectives for each of the divisions.

Mr. McDonnell suggested that we need to find a way to expand the e-mail list. He felt the marketing committee could be a longer lasting committee since we needed to "sell" ourselves not just now but into the future. Mr. McDonnell said that he felt Mrs. McIver would be the one to decide if it should be a longer lasting committee. Mrs. McIver said that the nice thing about this project is that it was an easy sell. She said that once we have the objectives defined, the challenge will be working with a limited budget and how much the staff could take over on an ongoing basis. She said she was looking forward to working on this project.

Mrs. Moore encouraged the Commissioners to share their e-mail lists to be added to the Recreation Department database for the blast e-mails.

IX. ANY OTHER MATTERS

A. January 2011, Staff Report - Mr. Boodheshwar asked the Commission if there were any questions regarding the report that they had received. There were none.

X. ADJOURNMENT

Mrs. Moore called for a motion to adjourn. Mr. Della Giustina made the motion to adjourn, seconded by Mr. Jamison. Meeting was adjourned at 10:15 a.m.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

Special Olympics Pro-Am Golf Tournament at the Par 3 Golf Course.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated February 7, 2011, from Jay Boodheshwar, Director of Recreation and Special Projects
- Proposed Event and Partnership Overview

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Par 3 Golf Marathon Championship at Palm Beach Par 3 Golf Course to Benefit Special Olympics Florida

Date: February 7, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve a partnership between the Town of Palm Beach Par 3 Golf Course and Special Olympics Florida (SOFL) to host a fundraising event in December 2011.

GENERAL INFORMATION

In an effort to raise funds and awareness of the Palm Beach Par 3 Golf Course and Special Olympics, a partnership between SOFL and the Par 3 to host the "Par 3 Golf Marathon Championship" and a qualifying event has been proposed. The Par 3 Golf Marathon Championship would be the culmination of a statewide grassroots fundraising campaign and several regional qualifying "marathons" for SOFL and result in statewide and national exposure for the Par 3 Golf Course. Golf Hall of Famer and Town resident Mr. Raymond Floyd has agreed to serve as the Honorary Chair, should the event and partnership be authorized. Under the current timeline the event is scheduled to be held the first week of December 2011.

In addition to creating a potential long-term partnership to establish a recurring revenue stream that will help SOFL to provide the best opportunities for their athletes, the goals would also be to raise funds to support the Par 3 and to raise awareness about the Par 3 through a statewide marketing campaign and televised championship.

It is expected that this series of events will culminate in a televised championship – the "Par 3 Golf Marathon Championship", allowing celebrities, sports stars, and amateur golfers to compete in a format without the use of the handicap system. The rules of play build to a dramatic final single, winner-take-all championship hole. Golfers will play 100 par three golf holes in a single day using modified golf rules to determine a champion. The championship elements at the Palm Beach Par 3 for the TV special include:

DAY 1
Celebrity Pro-Am
Junior Clinic celebrating Special Olympics Unified Sports
Pairings Party and Auction

DAY 2
Par 3 Golf Marathon Championship
Post Marathon Victory Party and Live Concert

The opportunity for statewide recognition rests in the regional qualifying events at Par 3 courses in several major markets in Florida, who will play host to Regional Qualifying Marathons. Winners of the regional qualifiers will advance to the Championship at the Palm Beach Par 3. This statewide model allows for greater marketing opportunities and enhanced exposure for the Palm Beach Par 3 Golf Course.

SPECIAL CONSIDERATIONS

Staff is seeking Town Council consideration and approval to enter this partnership because, unlike other outings and events, this program will require closing the course to the public for two days. Please note that all required permit applications will be completed by SOFL if approved, including a Town charitable solicitation permit.

FUNDING/FISCAL IMPACT

SOFL proposes to pay a fee to the Town for use of the golf course to host the Par 3 Marathon Championship at a minimum of the opportunity cost for these two days, which is expected to be approximately $18,000. SOFL also proposes to share net revenue with TOPB at a rate of 75% to SOFL and 25% to the Town, which could result in an additional $75,000 in revenue for the Town. After $300,000 generated in net revenue, 100% will go to SOFL. Net Revenue is defined as sponsorship and any event revenue like funds generated at the auctions, concession sales, pro-am entry fees, etc.

cc: Recreation Advisory Commission
Alan Brown, Assistant Director of Recreation
Matthew Levy, Special Olympics Florida

Concept Overview
Par 3 Marathon

A Fundraising Special Event Benefitting

Special Olympics
Florida

PALM BEACH G.C.
golfontheocean.com

Palm Beach Town Council Meeting
February 15, 2011

Prepared by Matthew Levy matthewlevy@sofl.org 407.756.3626

I. Par 3 Golf Marathon Overview

A. **Par 3 Golf Marathon** is a grassroots fundraising concept culminating in a televised Championship. Golfers play 100 par three golf holes in a single day using modified golf rules to determine a champion. Proceeds benefit the athletes of Special Olympics Florida and the Palm Beach Par 3.

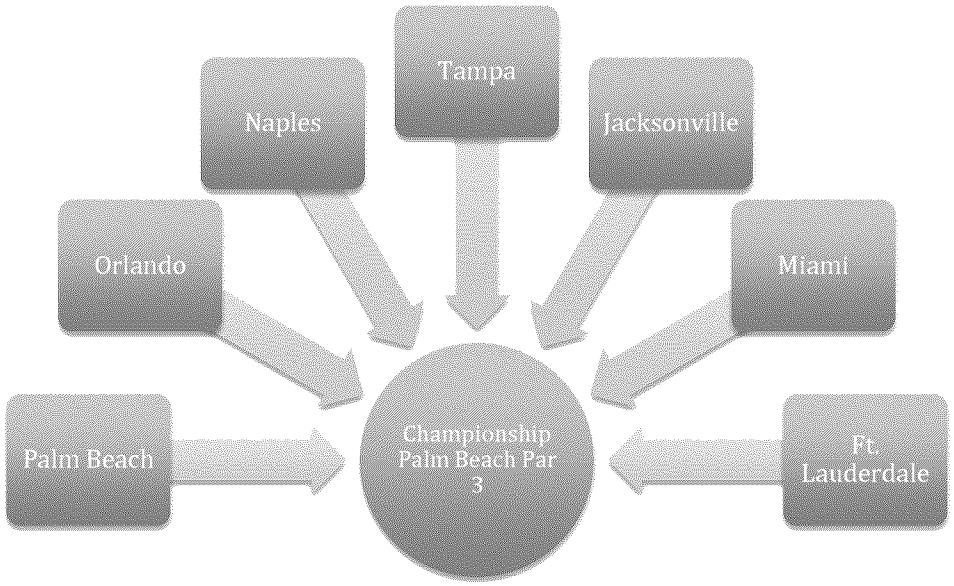
B. **Par 3 Golf Marathon Championship** is a televised special allowing celebrities, sports stars, and amateur golfers to compete in an exciting format with out the use of the handicap system. The rules of play build the drama to a titillating and dramatic final single, winner-take-all championship hole. *See Rules of Play*

C. **Championship Elements** at Palm Beach Par 3 (TV Special)

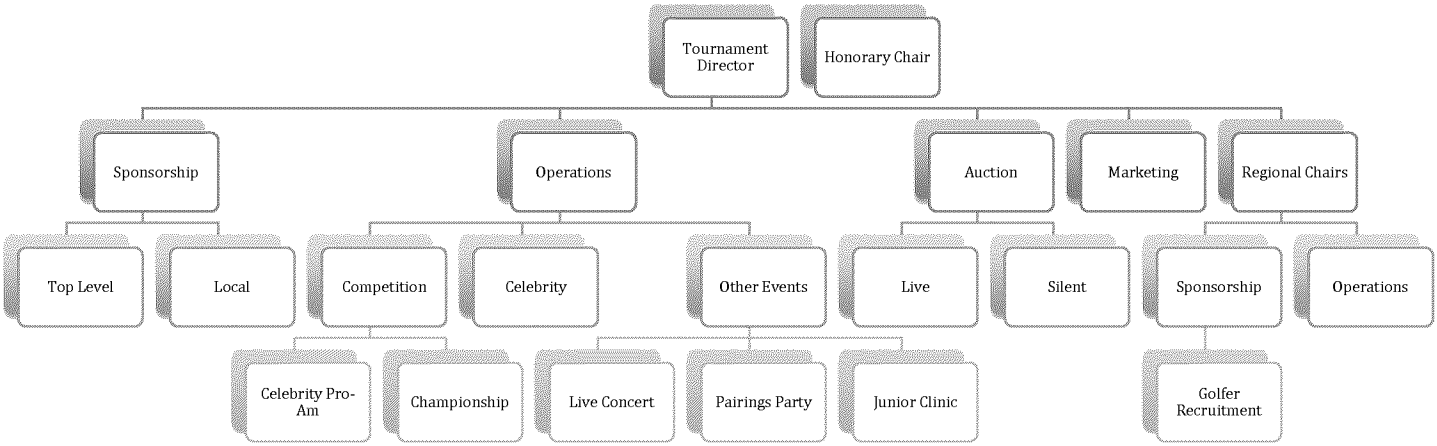
1. Celebrity Pro-Am – Day 1
2. Junior Clinic celebrating Special Olympics Unified Sports – Day 1
3. Pairings Party and Auction – Night 1
4. Par 3 Marathon Championship – Day 2
5. Post Marathon Victory Party and Live Concert (by invitation) – Night 2

D. **Regional Qualifying -** Major Florida Markets

1. Par 3 Courses in major markets in Florida play host to Regional Qualifying
2. Winners of Regional Qualifying advance to the Championship at Palm Beach Par 3
3. Model allows for statewide marketing - attractive to sponsors



II. Committee Architecture*



*The Committee will be made up of Special Olympics Staff, Town of Palm Beach Staff and volunteers

III. Fundraising – Revenue Streams

A. **Sponsorship –** Sponsorship levels tied to benefits we can secure (i.e. TV)

B. **Grassroots –** Individual online fundraising pages, local sponsorship

C. **Auction –** During Pairings Party

D. **Celebrity Pro-Am** – Held prior to Championship

IV. Strategic Partnerships

A. **Associations:** PGA of America, CMAA FL, GCSAA, LPGA

B. **Industry Leaders:** Hotel, Transportation, Airline, F & B

V. The Par 3 Championship Marathoners – Three Divisions

A. **Professional Division** – *High Quality Golf Shots*

1. LPGA – revives the long and storied history with Palm Beach Par 3
2. Non-Tour Members – played on Tour, but no longer require a rights fee
3. PGA of America Professionals – back bone of Special Olympics' golf program

B. **Celebrity Division** – *Exciting*

1. Film and TV
2. Music
3. Sports

C. **Amateur Division** - *Inspirational*

1. **Special Olympics Invitees** – Inspirational Back Stories
   a) Select Special Olympics golfers can be competitive in this format
   b) Coaches and or volunteers who have compelling back story with organization
2. **Regional Qualifiers** – Earned Their Spot
   a) Champion from each Regional Qualifying venue is invited
   b) Top fundraisers from Regional Qualifying venue is invited
3. **Corporate Sponsors** – Pay to Play Scenario

VI. Rules of Play – 100 Hole Par 3 Marathon (groups repaired after each round)

A. **Round 1** – play 18 holes, 3 balls per hole. (54 holes)

1. Maximum score is bogey 4
2. Any ball coming to rest inside 5 feet is given
3. Scoring
   a) *Bogey or worse* *= 1 points*
   b) *Par* *= 2 point*
   c) *Birdie* *= 4 points*
   d) *Ace* *= 8 points*

B. **Round 2** – Play 18 holes, 2 balls per hole. (90 holes) *same scoring as Round 1*

C. **Round 3** – play 10 holes, 1 ball per hole. Max score is bogey. (100 holes)

1. Maximum score is bogey 4
2. Putt everything out
3. Scoring is doubled
   a) *Bogey or worse* *= 2 points*
   b) *Par* *= 4 points*
   c) *Birdie* *= 8 points*
   d) *Ace* *= 16 points*

D. **Round 4** – Championship, play 1 hole, 1 ball

1. One Hole, Sudden Death, Winner Take All
2. Possibly under the lights with ocean as back drop
3. 6 players tee off – top 2 from each division (pro's play back tee)
4. On second shot, closest player plays first (opposite of USGA Rules)
5. First birdie becomes Par 3 Marathon Champion
6. If no birdies, closest tee shot is Champion (players hit maximum of 2 shots)

E. **On Course Contests**

1. Closest-to-the-Flag contest on selected holes
2. Hole-in-One contest on selected holes

VII. Time Line

February 2011	• Gain approval from Town of Palm Beach • Create and execute agreement • Open dialogue with TV - NBC Sports and/or Golf Channel • Create committees • Identify Regional Qualifying Sites • Recruit celebrities and other invited players • Identify top level sponsors
March 2011	• TV Contract done • Identify Local Sponsors • Secure Lodging for golfers • Secure golf course from Celebrity Pro-Am (could be Par 3)
April 2011	• Secure Presenting Sponsorship • Gain Commitments of Celebrities • Identify Auction Items • Recruit Regional Qualifiers
June 2011	• Secure Entertainment for Concert • Secure local sponsorship • Identify Auction Items • Gain Commitments of Celebrities
July 2011	• Secure local sponsorship • Identify Auction Items • Gain Commitments of Celebrities
September 2011	• Secure local sponsorship • Identify Auction Items • Gain Commitments of Celebrities
October 2011	• Regional Qualifiers
November 2011	• Regional Qualifiers
December 2011	• Championship

Par 3 Marathon Championship at Palm Beach Par 3

Honorary Chair Raymond Floyd

Special Olympics Florida ("SOFL") wishes to enter into a partnership with the Town of Palm Beach ("TOPB") to host the Par 3 Marathon Championship and host a qualifying event. The partnership will be celebrated in a written agreement.

The Par 3 Marathon Championship at Palm Beach Par 3 is the culmination of a statewide grassroots fundraising campaign. A full explanation of the concept including a timeline can be found in the Concept Document.

GOALS

- To create a long-term partnership so as to establish a recurring revenue stream that will help Special Olympics Florida to provide the best opportunities for our athletes.
- To raise funds to support the Palm Beach Par 3.
- To raise awareness about the Palm Beach Par 3 through a statewide marketing campaign and televised championship.

EXPECTATIONS

TOPB to support the event in the following ways:

- TOPB to make available the Palm Beach Par 3 for use for a Par 3 Marathon Qualifying event and the Par 3 Marathon Championship.
- TOPB to assist SOFL in identifying volunteers to serve on the Par 3 Marathon Committee
- TOPB to assist SOFL to secure the commitment of celebrities, professional golfers, and participants for the Championship
- TOPB to have a staff representative on the Par 3 Marathon Committee
- TOPB to provide access to the Palm Beach Par 3 to host sponsor and committee prospects.

SOFL to support the event in the following ways:

- SOFL to identify volunteers to serve on the Par 3 Marathon Committee
- SOFL to secure sponsorship for the Par 3 Marathon Championship
- SOFL to secure the commitment of celebrities, professional golfers, and participants for the Championship
- SOFL to manage and execute all elements of the grassroots qualifying events
- SOFL to create all marketing collateral
- SOFL to manage all finances (collect revenue and pay vendors)
- SOFL to manage the Par 3 Marathon Committee

FINANCIAL STRUCTURE

1. **Site Fee** – A fee will be paid to the TOPB for use of the golf course to host the Par 3 Marathon Championship at a minimum of the opportunity cost for these two days, which is expected to be approximately $18,000. Under our working timeline, we are planning to host the event in the first week of December.

2. **Revenue Share** - SOFL to share net revenue with TOPB at a rate of 75% to SOFL and 25% to TOPB. After $300,000 generated in net revenue, 100% will go to SOFL. Net Revenue is defined as sponsorship and any event revenue like funds generated at the auctions, concession sales, pro-am entry fees, etc. Revenue generated from online fundraising pages is a direct donation to Special Olympics Florida and not subject to revenue sharing.

Contact: Matthew Levy
VP, Resource Development, Special Olympics Florida
matthewlevy@sofl.org c (407) 756 - 3626

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

All Town Centennial Celebration on April 17, 2011.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum Dated February 7, 2011, from Jay Boodheshwar, Director of Recreation and Special Projects and Bill Bone, Centennial Commission Chairman
- Proposed Parade Route and All-Town Celebration Site Map

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects
Bill Bone, Centennial Commission Chairman

Re: Proposed Centennial Parade and All-Town Celebration on April 17, 2011

Date: February 7, 2011

STAFF RECOMMENDATION

Staff recommends that the Mayor and Town Council review the following report regarding the planning efforts for a Centennial Parade and the All-Town Centennial Celebration, and provide direction and approval as necessary.

GENERAL INFORMATION

In an effort to bring the Centennial Season to an appropriate closure through a grand celebration, the Centennial Commission is planning an All-Town Centennial Celebration on the grounds of the Flagler Museum. The event is to be preceded by a "promenade" style parade from the Palm Beach Day Academy/Recreation Center to the Flagler Museum.

The planning process has included the development of an outline by the Palm Beach Day Academy for the promenade, event planning by the Centennial Commission, and a review with Public Safety officials regarding safety concerns and overtime costs related to the event. The two events outlined below will require the temporary closing of some roads, but planning is progressing with the intent to minimize the impact on residents.

All-Town Centennial Celebration

This event, coordinated by the Centennial Commission with assistance from the Flagler Museum and professional event planners, is designed to close the Centennial Season on the actual 100th anniversary of the Town's incorporation, with a grand celebration. The event, open to all residents free of charge, is expected to feature music, a short program with dignitaries and speakers, performances, a light and laser show, and fireworks.

Planners are looking into the feasibility of using mass transportation from south and north for island residents in an effort to minimize impact on roads and parking. Trolleys or buses will pick up passengers from various points throughout the island and drop them off near the Flagler Museum. The Fire Rescue Department has been consulted in the planning process and will have a dedicated Rescue Unit for the event with costs being covered by the Centennial Commission.

The Police Department is also involved in the planning. Once the traffic control and security needs are finalized, the Police Department will provide the Centennial Commission with a staffing plan and costs, which will be paid for by the Commission. Coordination is also taking place with Royal Poinciana Plaza representatives to provide nearby parking access.

Centennial Parade
The parade, organized in conjunction with the Palm Beach Day Academy, and featuring primarily children from several area schools, is designed to feature Palm Beach's next generation through an event that is participatory promenade and not spectator based. There will be dignitaries and some Centennial Commission members participating. The parade will finalize its staging at approximately 6:00 PM on Seaview Avenue and in the west field of the Day Academy. The route starts at Seaview Avenue and Cocoanut Row heading north to the Flagler Museum. The ½ mile promenade is tentatively scheduled to begin at 6:15 PM and finish around 7:15 PM. Road closures will be necessary, but kept to a minimum, and are requested as follows:

- Seaview Avenue between S. County Road and Cocoanut Row will need to be closed to traffic at 5:00 PM, re-opening at 7:00 PM.

- Cocoanut Row, between Royal Palm Way and Royal Poinciana Way, will need to be closed at 5:30 PM. Traffic will re-open at approximately 7:00 PM between Royal Palm Way and Pendleton Avenue, but Cocoanut will remain closed between Pendleton and Royal Poinciana Way for the All-Town Celebration at the Flagler Museum. Only local traffic to Chapel Hill will be permitted from the south, but will be managed by police officers.

SPECIAL CONSIDERATIONS

Participation from the Fire-Rescue and Police Department has also been requested for the parade, to include fire-rescue vehicles, police motorcycles, etc. Notice to all affected residences will be distributed by the Centennial Commission and traffic will be managed by the Police Department.

FUNDING/FISCAL IMPACT

As previously planned, the Centennial Commission has incorporated as a non-profit organization and is in the process of obtaining its 501 (c) 3 designation. There is no fiscal impact to the Town, other than the staff time that has been dedicated to the planning efforts. The Centennial Commission understands that it must underwrite all the costs associated with the parade and the All-Town Celebration, as well as any special duty overtime required by public safety employees. Funding will be accomplished through an organized sponsor/donation program.

cc: Thomas G. Bradford, Deputy Town Manager
Department Directors
Daniel Szarszewski, Police Major
Brodie Atwater, Assistant Fire-Rescue Chief
Centennial Commission Members
Centennial Promenade Committee

Parade Route

All-Town Celebration

Centennial Parade & All-Town Celebration Site Plan

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

Proposal for a Green Market to be Held Within the Royal Poinciana Plaza.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated February 4, 2011, from Thomas G. Bradford, Deputy Town Manager
- Green Market Proposal

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Proposed Royal Poinciana Way Association Green Market

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council provide direction to staff in regard to the Royal Poinciana Way Association proposal to conduct a Green Market.

GENERAL INFORMATION

At the Town Council meeting in April 2009, the Town Council approved the following policy as a prerequisite to considering promotional events sponsored by one of the Town's business associations for application to those instances where the proposed event would result in technical, but minor, violations of the Town Code:

1. The event must be sponsored by the Palm Beach Chamber of Commerce, the Royal Poinciana Way Business Association, the Greater South County Road Association, or the Worth Avenue Association.
2. The event must not involve the blocking of any public streets or sidewalks.
3. The event must be no longer than 4 hours duration.
4. The event organizers must coordinate their plans with the Police and Fire-Rescue Departments and must adhere to any conditions established by those two departments for protection of public safety.
5. The event organizers must coordinate their plans with the Public Works Department and must adhere to any conditions established by that department for the protection of property and infrastructure.
6. Each proposed event will be considered on its own merits and will be allowed only if approved by a majority vote of the Town Council.

The Royal Poinciana Way Association proposes to sponsor weekly Green Market during the season, November-April. They want to launch the Green Market this season beginning on March 6 through April to build momentum for the following season. The Green Market would be conducted on private property at the Royal Poinciana Plaza. The event coordinators wish to conduct the event for 5 hours instead of the 4 hour duration enumerated in the approved policy.

The problem is that while a successful Green Market can in fact be a community-wide event as evidenced in other parts of the country, it is also a form of outdoor sales that the Zoning Code currently prohibits.

We suspect that this concept will prove to be popular if the right location is selected, it is properly planned using quality vendors and word gets out to Town residents. It could also fill a void while Publix is under renovation. It could generate spillover business within the Royal Poinciana Way Commercial District. Mr. Welsh and his firm held the auto show without incident and in speaking with him about the Green Market it sounds like it is going to be done using quality local vendors that have experience successfully servicing other community markets. With all of this apparently going for it, staff does not wish to turn them away when the concept is appears close to being what the Town Council may have been contemplating when it set forth a policy for promotional events back in 2009.

We need direction on how this should be handled. Options include:

- Changing the zoning code to allow outdoor sales of a certain type like a Green Market
- Make the proposal a Town sanctioned event and hold it in Bradley Park instead of a commercially zoned property like the Royal Poinciana Plaza
- Allow there to be a limited number of Green Market days regardless of location to gauge the impact and then revisit the concept at a future Town Council meeting.
- Do not allow the Green Market

Attached hereto as Exhibit A, please see the Green Market concept proposal submitted by Mr. Harry Welsh who has been doing the planning work for the concept on behalf of the Royal Poinciana Way Association.

TGB/ab
cc: Department Directors
William Cummings, President, Royal Poinciana Way Association
Harry K. Welsh, Main Street Marketing, LLC

N:TGB/Agenda Items/2011/ Proposed Royal Poinciana Way Association Green Market 021511 TCM

EXHIBIT A

Green Market Proposal
Town of Palm Beach

CONCEPT:

Coordinate a weekly Green Market at Royal Poinciana Plaza (RPP) during the 'Season' (November-April). We are looking at Sundays from 10am-3pm. The Market would present high-end goods from area vendors e.g., fruits, vegetables, eggs, cheeses, breads, herbs, spices, jams, condiments, flowers, etc. There will be no on-site, unrelated, food concessions.

Virtually every community has some form of organized 'Market' assembly. People love 'healthy and fresh.' The RPP Market would give Island residents the convenience, and much-cherished quality-of-life', they most likely enjoy year-round at other location. Moreover, residents will not have to 'go over the bridge'. With Publix's out of service next season, the Market could not come at a better time. Anything to help ease the 'pain'…will be much appreciated by all.

VENDORS:

We will be utilizing the north parking lot at RPP…corner of Royal Poinciana Way and Coconut (this space was perfect for the Auto Show). The designated area can comfortably accommodate the number of vendors to host a viable Market. Each booth requires approximately the same space as designated for a 'parked car'. Additional parking is available to accommodate vendor and consumer parking.

LOGISTIC:

Regular traffic and parking would not be affected. Traffic flow would be same as designed. It is understood that we will comply with all Town ordinances.

TEST:

We need to launch the Market this season. This allows us the opportunity to get the momentum going for next season. We would start the first Sunday in March (6th) and continuing through April.

CONCLUSION:

1 Main Street, LLC successfully introduced the first town approved private event on December 12, 2010 (Auto Show at Palm Beach). Everyone was very happy with outcome. Therefore, we believe the continued momentum will greatly benefit the Royal Poinciana Way neighborhood and Palm Beach businesses, as a whole. The overwhelming response from both vendors and select residents has been…Finally!

EXHIBIT A

Royal Poinciana Business District

Mr. Harry K Welsh
1 Main Street Marketing
235 Sunrise Avenue
Palm Beach, Florida 33480

Re: Green Market

Dear Harry,

I was so pleased with the Auto Show at Royal Poinciana Plaza and the positive response we received from the Palm Beachers who attended, that I whole heartedly support the concept of a Green Market held on the same property.

What a wonderful hometown event based on the tradition of locals picking from the farmer's produce in the Town Square, especially during our Centennial Year.

On a more practical note, with Publix soon closing, neighbors will be in real need of fresh foodstuffs.

We offer you our full support and we look forward to joining you in your efforts to create a valuable opportunity to mix and mingle while selecting from top quality products in a relaxed marketplace.

Thank you, Harry, for a job well done.

Sincerely,

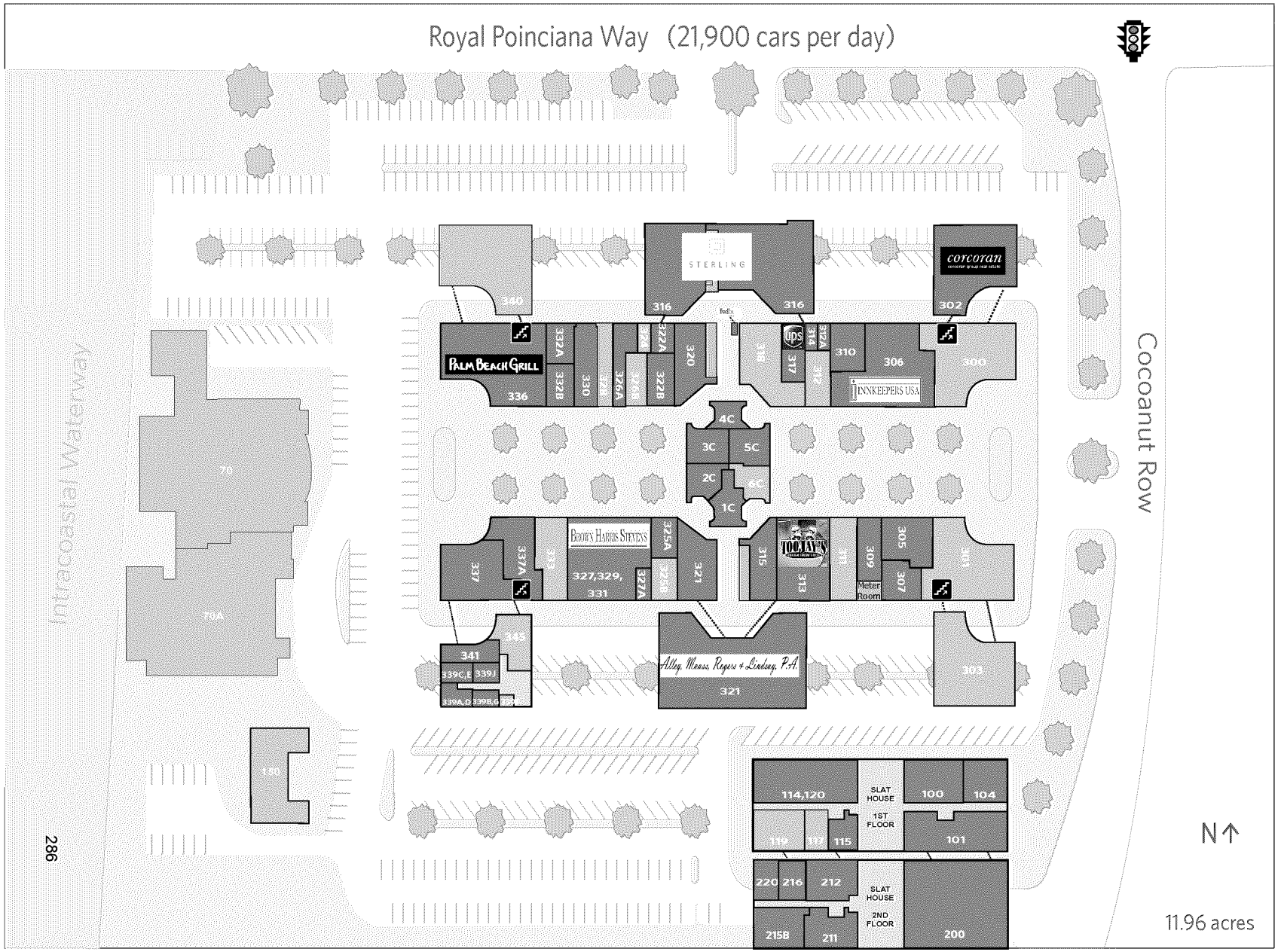
William Roger Cummings
561.282.5692

EXHIBIT A

ROYAL POINCIANA PLAZA

Palm Beach, Florida

STERLING ORGANIZATION



LEASING LEGEND

Suite	Tenant	SF
1C	Armond's Salon	975
2C	Angelo's of Palm Beach	800
3C	Tree of Life Foundation	800
4C	Mirsky Cole	1,000
5C	Innkeeper Gym	800
[illegible]	Available	[illegible]
M300	Available	4,734
M301	Available	5,000
M302	Cocoran Group	5,500
M303	Available	5,500
M305	Sidney Kohl	2,750
M306	Innkeeper USA	9,102
M307	Alphabet Soup	1,600
M309	Clinic Anaya	1,680
M310	Royal Pet Grooming	1,408
M311	Available	1,382
M312	Available	1,375
M312A	Tonto's Orchid Shop	350
M313	Toojay's	3,835
M314	Hair and Nail Boutique	350
M315	Island Medical	1,900
M316	The Sterling Organization	9,000
M317	The UPS Store	1,229
M318	Available	1,550
M320	Just for You	2,160
M321	Alley Maass	11,625
M322A	Martha Gottfried	1,050
M322B	Boca Nursing	1,000
M324	Available	400
M325A	Fitness Edge	1,000
M325B	Available	325
M326A	Poinciana Mgmt. (Mezzanine)	1,800
M326B	Available	900
M327A	Plaza Hair & Nails	400
M327B	Available	1,500
M329	Brown Harris Stevens	5,125
M330	Couture and More	2,000
M332A	House of Lavande	882
M332B	Parasutra	850
M333	Available	1,387
M336	Palm Beach Grill	7,000
M337/341	Sotheby's	5,300
M337A	Edwards of Palm Beach	2,150
M339AD	Advanced Mental Health Care	650
M339BG	Susan Lee	400
M339CE	Advanced Mental Health Care	550
M339F	Available	250
M339J	Murphy Reid, LLP	600
M340	Available	1,435
M345	Available	1,550
PLAYHOUSE/CLUB/HIBEL		
150	Available	1,850
170	Available	22,500
170A	Available	18,000
SLAT HOUSE		
S100/200	Island Hospitality Management	10,204
S101	Michael R. McCarty's	5,760
S104	Dr. Francis Conroy	1,340
S110	Available	4,[illegible]
S113	Available	2,[illegible]
S120	Island Dermatology	4,540
S211	Innkeeper Hospitality	2,710
S212/220	BG Strategic Advisors	3,380
S215B	Chiropractic Care	1,540
S216	Chatam Lodging	1,160
TOTAL SQ. FT.		195,253

The information herein is for illustrative purposes only. The size and location of the project, the identity or nature of any occupant and all features, matters and other information are subject to change without notice and should not be relied upon by any party. No representation or warranty, express or implied, is made as to the accuracy or reliability of the information.

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

Parking on Clarke Avenue.

BACKUP FOR THIS ITEM WILL BE DISTRIBUTED UNDER SEPARATE COVER POSTED TO THE TOWN'S WEBSITE AS SUPPLEMENTAL BACKUP.

Presenter

H. Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Regular Agenda - New Business

Agenda Title

Use of Public Beach Access by Private Beach Cleaners.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 3, 2011, from H. Paul Brazil, Director of Public Works.
- Mid-Town Beach Access
- Phipps Ocean Park Access

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Private Beach Cleaner Use of Public Access Points

Date: February 3, 2011

STAFF RECOMMENDATION

Town staff requests Council direction concerning allowing private beach cleaning companies to use the Town beach access points to provide services to Town residents. Existing Town ordinances will be revised based on Council's direction.

GENERAL INFORMATION

In prior years, the condominiums south of Sloan's Curve would use the Town's beach cleaning staff to clean their private beaches and reimburse the Town for actual costs. When staff size was reduced, Public Works could no longer provide these services. The condominiums have now hired private firms to continue their beach cleaning services.

What was at first just one firm that assumed the beach cleaning duties for the condominiums, has now turned into multiple firms. It is acknowledged that the services that are being provided are beneficial to the private properties that desire mechanically cleaned beaches. Any mechanical beach cleaning firm, including the Town, must obtain an FDEP field permit each year to conduct beach cleaning services. This activity, however, can be performed without the use of a tractor. There are private properties in Town who have their beaches cleaned by hand.

The public access points, at Mid-Town and Phipps Ocean Park, have been utilized (or have attempted to be utilized) by private firms for private interests. The code of ordinances currently includes the following paragraphs:

- **Sec. 74-195 Motor Vehicles**. No motor vehicle shall be driven upon the beaches or over dune areas adjacent to beaches without the previous written consent of the Chief of Police.

- **Sec. 66-82 Motor Vehicles**. No person shall drive any motor vehicle on, over or across any sand dune, except when authorized in advance by the Town's Building Official to traverse a specific portion of the dune in the performance of town-approved activities.

SPECIAL CONSIDERATIONS

Staff is concerned about potential liability of allowing private companies to regularly use Town access points. The two access points each present unique challenges. The midtown beach access is relatively flat and easy for equipment to maneuver but the beach is very well used and concerns exist about the interaction between equipment and beach goers. The Phipps park beach is less used but the access is more challenging. It is necessary to go over a dune that is 18 to 20 feet high. An inexperienced or careless equipment operator could easily have an accident in this area. We have included photographs of each of these access points for your reference.

The Town Council may consider treating the two areas differently if the liability appears to be less in one area than another. Also, if this is to be allowed, the Town must minimize it's liability by requiring proper insurance by any private contractor. The Town's Risk Manager would establish the insurance requirements.

Lastly, the Town has on a case by case basis allowed contractors working on construction projects (ie. seawall construction) to use a public beach accesses. This is considered when no other access is available for necessary work or if access through the private property would actually cause more environmental impacts than using the existing access points. Depending on the magnitude of the work, access has been granted by either staff or Council authorization. We recommend that this practice continue.

FUNDING/FISCAL IMPACT

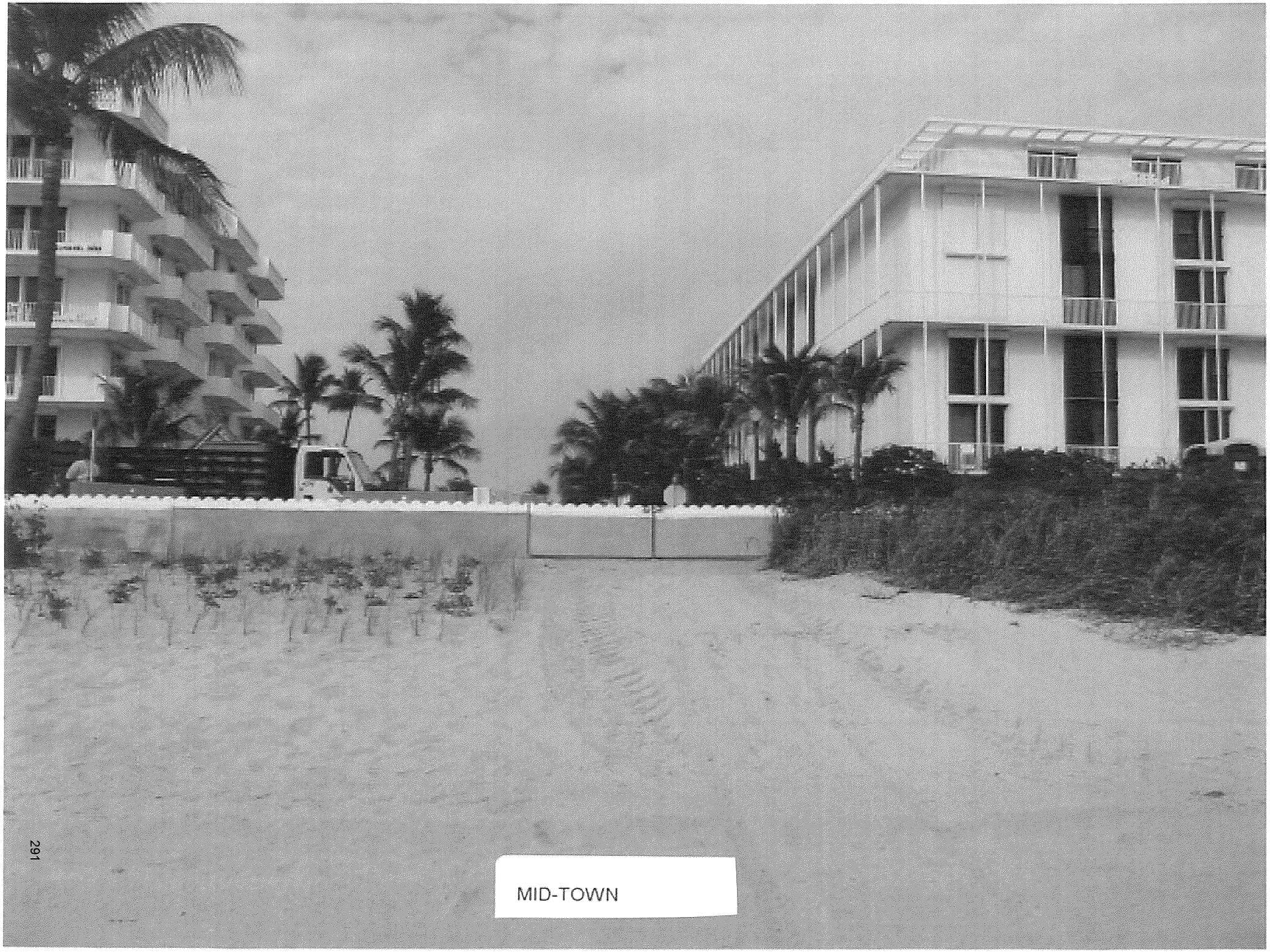
Town Council may want to consider a fee for private vehicles to utilize these access points. The fee would cover staff costs to review insurance documents and other pertinent information.

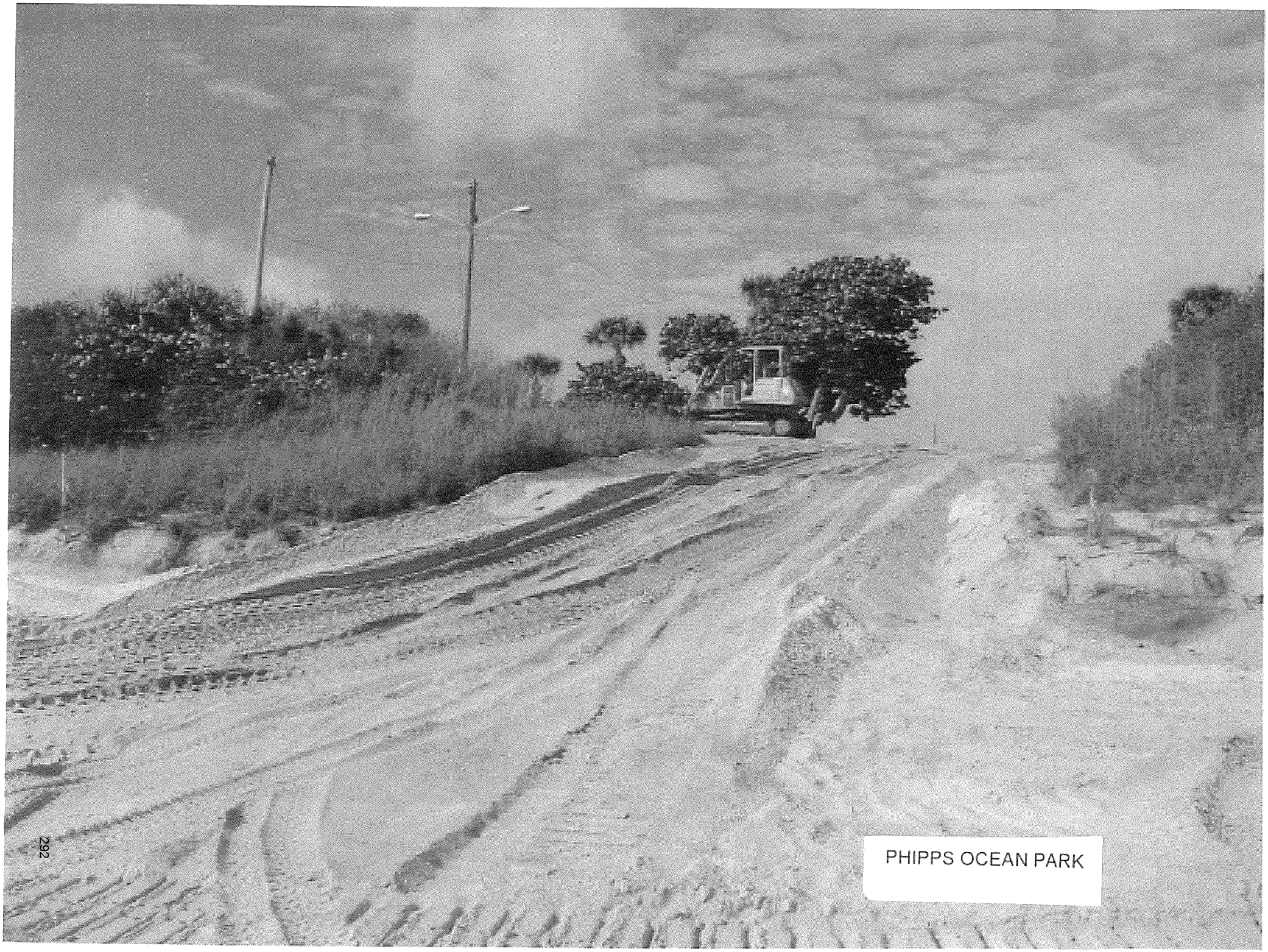
TOWN ATTORNEY REVIEW

The Town Attorney will be asked to review and comment on any proposed policy or ordinance.

Attachments

cc: Thomas Bradford, Deputy Town Manager
James Bowser, P.E., Town Engineer
Robert Weber, Coastal Coordinator


MID-TOWN


PHIPPS OCEAN PARK

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 7-11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Granting To Florida Power & Light Company, Its Successors And Assigns, An Electric Franchise, Imposing Provisions And Conditions Relating Thereto, Providing For Monthly Payments To The Town Of Palm Beach, And Providing For An Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated February 7, 2011, from Thomas G. Bradford, Deputy Town Manager
- Ordinance No. 7-11
- Patrick Bryan Email, F.S.73.0715 and Draft PBE Letter

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: FPL Franchise Agreement Renewal
Ordinance No. 7-11

Date: February 4, 2011

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the proposed FPL franchise agreement with the modifications requested by the Public Works Committee by adopting Ordinance No. 7-11. All changes requested by the Public Works Committee at their meeting on February 1 to review the franchise agreement have been accepted by FPL subject to the Town agreeing to adopt the franchise ordinance prior to expiration of the existing franchise agreement in late March 2011 and with one exception.

FPL does not wish to include language allowing the Town to purchase FPL facilities at the end of the franchise term in the franchise agreement. This request is contrary to FPL policy and FPL has noted that the Town can seek ownership of those facilities at any time through condemnation should the Town wish to enter into the municipal electric utility business. Procedures for purchasing electric utility facilities are addressed in F.S. 73.0715, a copy of which is enclosed herewith as an exhibit.

GENERAL INFORMATION

The existing franchise agreement with FPL is set to expire in March of this year. Staff has been working with FPL to reach agreement on a new franchise agreement for about 10 months. Please see attached Exhibit A to review the latest edition of our work. The Public Works Committee met on February 1 to review the proposed agreement. This is a redline edition to delineate modifications requested by the Public Works Committee and agreed to by FPL.

The proposed new franchise agreement sets forth the terms and conditions for the non-exclusive right of FPL to provide electricity and related services within the corporate limits of Palm Beach for a term of 30 years from the effective date.

Appearing below is a section by section summary of the content of the proposed franchise agreement.

Section 1. Granting and Term of Franchise. – This section sets forth the term of the franchise (30 years), defines the non-exclusive electricity related services that may be provided and where those services and facilities may be provided and installed. This section contains the addition of one word as requested by the Public Works Committee.

Section 2. Facilities Requirements. – Sets forth the conditions associated with location and re-location of FPL facilities in right-of-way and easements. This section contains the addition of one word as requested by the Public Works Committee.

Section 3. Indemnification of Grantor. – This section requires FPL to indemnify and hold harmless the Town and its officers, etc. from claims, including reasonable attorney fees, for any injury, loss of life or property damage from negligence, default or misconduct of FPL, its employees, agents, etc., without any affect on the Town's sovereign immunity. The Town Attorney requested the deletion of the sentence at the end of the section which reads: *"Nothing in this agreement shall be deemed to affect the Grantor's rights, privileges and immunities as set forth in Florida Statute Section 768.28."* The Public Works Committee concurred and FPL has deleted the same in the redline.

Section 4. Rates, Rules and Regulations. – All FPL rates, rules, and regulations shall be pursuant to law or administrative rule applicable to FPL.

Section 5(a). Franchise Fee, Calculation and Payment. – Currently, at 6%, the new franchise fee is proposed at 5.9%. However, the formula employed is also different resulting in an estimated annual increase in revenue of approximately $20,000 per year to the Town. A copy of the franchise fee calculation sheet is attached hereto as Exhibit B. The Public Works Committee requested that the words *"as in the existing franchise Ordinance No. 4-81"* be deleted so as not to have linkage between tow separate and distinct documents. FPL has agreed to do that.

Section 5(b). Grantor's Option to Decrease or Increase the Franchise Fee Percentage Rate. – Allows the Town to increase or decrease the franchise fee not more than once per year in increments of not less than 1%, not to exceed 5.9% or go below 0.9%.

Section 6. Favored Nations. – This section grants to the Town the ability to secure the same franchise fee, along with the same terms and conditions, if any, of any municipality in Palm Beach County that may receive a franchise fee greater than 5.9%, if the municipality granted a higher franchise fee rate has a number of FPL electrical customers equal to, or less than, the amount of FPL electrical customers in Town.

Section 7. Non-Competition by Grantor. – Here, the Town agrees not to engage in the distribution or sale of electrical capacity or energy in competition with FPL, not to participate in a proceeding or contractual arrangement that would obligate FPL to

transmit or distribute electrical capacity or energy from a third party to any other retail customer's facilities.

Section 8(a). Renewable Energy and Conservation. The parties agree to work cooperatively in this regard.

Section 8(b). The Town may generate electric capacity and energy for its own facilities for its own use, including the use of renewable energy sources.

Section 9. Competitive Disadvantage; Termination by Grantee. This section allows FPL to terminate the franchise agreement after having given the Town 90 days notice of intent to terminate if FPL determines the terms and conditions granted by the Town in another electric franchise agreement are more favorable than those contained within this FPL franchise agreement.

Section 10. Legislative or Regulatory Action. Allows FPL to terminate the franchise within 120 days after providing notice to the Town of the existence of a competitive disadvantage created by a law or regulation of the USA or Florida if the Town cannot remedy the competitive disadvantage within 120 days of receipt of FPL notice.

Section 11. Default by Grantee; Forfeiture. If FPL fails to perform the Town may cause FPL to forfeit the franchise, but if protested by FPL the forfeit will not be valid until 6 months following expiration or exhaustion of any appeal.

Section 12. Default by Grantor. The Town would default if we deny use of public right-of-way contrary to the franchise agreement, impose conditions on right-of-way use contrary to Florida law or the franchise agreement, or unreasonably delay permit issuance to construct FPL facilities in right-of-way. FPL can withhold franchise fee payments to the town until the permit is issued or the court makes a final determination. The Public Works Committee requested that this language be modified to state that FPL may withhold franchise payments based upon default by the Town only after a court has so determined and only after the expiration of all appeals. FPL has agreed to these changes.

Section 13. Grantor's Right to Audit. The Town may audit once per year the calculation of the franchise payment for the proceeding year subject to the conditions of this section, including that the Town may not use a third party for such audits whose fee is contingent on the findings of the audit. The Town Attorney requested, and the Public Works Committee concurred, that the Town have two years in which to provide notice of a claim under the expired franchise. FPL has made this change notwithstanding their position that the statute of limitations of five years would apply to such a claim.

Sections 14 through Section 18. Each of these sections are fairly common ordinance conclusion sections with the exception of Section 15 which makes every provision interdependent as opposed to severable and Section 18 which requires FPL to file an acceptance letter with the Town in the form found in Exhibit A to the franchise

agreement ordinance within 30 days of adoption so that the record will reflect FPL acceptance.

In regard to Section 15, at the request of the Public Works Committee, this has been changed from an interdependent clause to a true severability clause meaning that if one section is stricken by a court that remainder shall stand. If this section had remained as drafted, a court striking one section would have caused the entire Agreement to become null and void.

In regard to a concern expressed by the Town Attorney, the Public Works Committee concurred that something should be added to make it clear over time that nothing within the franchise agreement can be used to deny the Town all of its rights under tariffs or PSC rules in any way. FPL agreed to provide language to that effect and has subsequently added a new Section 17 doing as promised.

There are two operational issues that the Town brought to the table in the negotiation process with FPL. Each Town request is intended to help us be better prepared for events under the control of FPL so that we can be more responsive to the needs of our residents. These issues are vegetative management and undergrounding/hardening.

When FPL intends to engage in vegetative management activities, which can be significant, we would like 30 days notice so that we know where the FPL workers will be and what to expect. There is evidence that FPL has attempted to communicate with staff on this issue, but sometimes the written notice has not been received by the right person.

As a result of the hurricanes of 2004 and 2005, electric utilities are now required to harden their facilities that meet certain criteria such a proximity to the coastline. Hardening can result in taller and bigger utility poles made of concrete as well as other specifics that many property owners may find objectionable. With sufficient notice to the Town, we can alert property owners of what is coming and undergrounding can be pursued if the required number of property owners prefer that to the proposed hardening alternative.

Since FPL feels these are operational issues, FPL wants these to be dealt with outside the scope of the franchise agreement. In lieu of having these issues in the franchise agreement, FPL has agreed to provide a letter of intent to the Town on FPL letterhead signed by a person with authority to bind FPL. Staff is willing to accept this so long as a letter of intent is sufficiently binding on FPL. If this can be worked out, the critical essence of the letter to be provided to the Town will impart the verbiage indicated below. In regard to the vegetation management language, the underlined words have been offered by FPL to address a concern raised by the Director of Public Works. Mr. Brazil felt FPL and the Town were well on the way toward finalizing a process, with notification of vegetation management activities by FPL. The underlined language has been offered by FPL to keep the parties on track with their current work. There were no changes suggested for the undergrounding/hardening language proposed for the side letter. This language also appears below.

Vegetation Management. FPL will work diligently, cooperatively, and in good faith with appropriate Town officials to formalize a process, subject to applicable legal and regulatory requirements, by which FPL will provide advance notice to the Town of planned vegetation maintenance and tree pruning or trimming activities, and by which effective lines of communication between the Town and FPL are established to facilitate resolution of any differences between the parties with respect to those activities. ~~Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within the Town, FPL will use reasonable efforts to provide the official designated by the Town with 30 days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service, perform restoration follow-up, or to avoid an imminent vegetation caused outage or when requested by the property owner.~~

Undergrounding/Hardening. Subject to FPL's tariff and Florida Public Service Commission rules, FPL agrees to work cooperatively and collaboratively with the Town with respect to: (a) potential underground conversions of electric distribution facilities and (b) provide information of any planned underground conversions or hardening efforts of FPL's existing overhead facilities within the incorporated areas of the Town. Additionally, FPL will provide annually a copy of its Ten Year Site Plan. Under separate cover, FPL will delineate which underground conversion and/or hardening projects included in the Ten Year Site Plan are applicable to the Town.

FUNDING/FISCAL IMPACT

Adoption of this proposed franchise agreement will result in an estimated increase of approximately $20,000 per year in franchise fees collected by the Town from FPL.

TOWN ATTORNEY REVIEW

This franchise agreement ordinance has been approved by the Town Attorney for a legal form and sufficiency.

cc: John C. Randolph, Town Attorney
H. Paul Brazil, Director of Public Works
Ethel Isaacs Williams, Area Manager External Affairs, FPL
Patrick M. Bryan, Senior Attorney, Law Department, FPL

N\TGB\2011\ Agenda Items\FPL Franchise Agreement Agenda Backup Memo TCM 021511

ORDINANCE NO. 7-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF PALM BEACH, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Palm Beach, Florida recognizes that the Town of Palm Beach and its citizens need and desire the continued benefits of electric service; and

WHEREAS, the provision of such service requires investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service, and the Town of Palm Beach does not desire to provide such services; and

WHEREAS, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, there is currently in effect a franchise agreement between the Town of Palm Beach and FPL, the terms of which are set forth in Town of Palm Beach Ordinance No. 4-81 passed and adopted March 10, 1981, and FPL's written acceptance thereof dated March 27, 1981 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

WHEREAS, FPL and the Town of Palm Beach desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to the Town of Palm Beach in exchange for the nonexclusive right and privilege of supplying electricity and other electricity-related services incidental thereto within the Town of Palm Beach free of competition from the Town of Palm Beach, pursuant to certain terms and conditions, and

WHEREAS, the Town Council of the Town of Palm Beach deems it to be in the best interest of the Town of Palm Beach and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

Section 1. Grant of Electric Utility Franchise; Term of Franchise. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future public roads, streets, alleys, bridges, easements, rights-of-way [and other public places] (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Palm Beach, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of

supplying electricity service and other electricity related services incidental thereto, which services are defined as FPL's facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electricity service, and which do not include any services that are sold to others, to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. Facilities Requirements. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with the convenient, safe, continuous use or the maintenance, improvement, extension of any public "road" as defined under the Florida Transportation Code, nor unreasonably interfere with reasonable egress from and ingress to abutting property. To avoid conflicts, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way including, but not necessarily limited to, those reasonable rules and regulations contained in Grantor's right-of-way manual, as may be amended, adopted pursuant to Section 106-4 of the Code of Ordinances of the Town of Palm Beach, (the "Standards Applicable to Public Rights-of-way and Easements Within the Town of Palm Beach); provided, however, that any such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than conflict with the standards set forth above, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers in accordance with the applicable service requirements of the Florida Public Service Commission, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the

configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible and such installation shall be consistent with the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time commensurate with the nature and extent of the work being performed and surrounding circumstances be replaced by the Grantee at its expense and in accordance with the adopted standards of the Grantor in effect at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. Indemnification of Grantor. Grantee shall indemnify and save harmless Grantor, its officers, employees, agents and representatives from any and all claims, suits, actions, damages, or causes of action arising during the term of this franchise, including Grantor's reasonable attorneys' fees incurred in or by reason of defense of any such claim, for any personal injury, loss of life or damage to property to the extent caused by the negligence, default, or misconduct of Grantee, its employees, agents, or subcontractors in the construction, operation or maintenance of its facilities hereunder. ~~Nothing in this agreement shall be deemed~~

~~to affect the Grantor's rights, privileges and immunities as set forth in Florida Statute Section 768.28.~~

Section 4. Rates, Rules and Regulations of Grantee. All rates, rules and regulations established by the Grantee shall be in accordance with all adopted regulations applicable to the Grantee as provided by law or administrative rule.

Section 5(a). Franchise Fee; Calculation; Payment. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 5.9 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 5.9 percent of such revenues for any monthly billing period of the Grantee. Grantee shall continue to receive franchise payments under the Current Franchise Agreement during the period between the effective date of this New Franchise Agreement and the first payment hereunder.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited~~, as in the existing franchise Ordinance No. 4-81,~~ to the precise revenues

described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 5(b). Grantor's Option to Decrease or Increase Percentage Rate. It is further provided that the Grantor shall have the option once annually, subject to all terms, conditions, and limitations specified below, to increase up to a maximum of 5.9% or decrease to a minimum of 0.9%, the percentage used to calculate the amount to be paid by the Grantee pursuant to this Section 5 (such percentage hereinafter sometimes referred to for purposes of this option as the "percentage"). This option shall be exercised, if at all, by an ordinance duly adopted by the Grantor in accordance with law, a certified copy of which must be delivered to the Grantee. Such ordinance shall include a provision that the Grantor is exercising the option provided herein and state the new percentage to be used in accordance with and subject to the terms, conditions and limitations set forth in this Section 5. In no event may the Grantor, in exercising this option, increase or decrease the percentage in increments of less than 1% from the percentage then in effect. The Grantor's option hereunder is limited solely to the percentage used to calculate the amount to be paid by Grantee pursuant to this Section 5, and no other section, provision or term of this franchise shall or may be altered, amended or affected by the Grantor's exercise of this option. Nothing herein shall require the Grantor to exercise its option hereunder. As a condition precedent to the taking effect of the ordinance exercising the option, the Grantee shall file its

acceptance of the new rate with the Grantor's Clerk within 30 days after receipt by Grantee of a certified copy of said ordinance. The effective date of the new rate shall be the date upon which the Grantee files its acceptance.

Section 6. Favored Nations. If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Palm Beach County, [where the number of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical customers within the incorporated areas of Grantor,] the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 5.9% of the Grantee's residential, commercial, and industrial revenues under the same terms and conditions as specified in Section 5 hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5 utilizing the same terms and conditions as set forth in Section 5 hereof shall be that greater rate provided for such other municipality within Palm Beach County; provided, however, that if the franchise with such other municipality within Palm Beach County contains additional benefits given to Grantee in exchange for the increased franchise rate, which such additional benefits are not contained in this franchise, such new franchise agreement shall include those additional benefits to the Grantee.

Section 7. Non-Competition by Grantor. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms

of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facililty(ies). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act or from utilizing generators and/or other electricity or energy-generating equipment during emergency situations. Nothing herein is intended to restrict the Grantor from providing services other than retail electricity service which is the subject of the Grantor's agreement not to compete set forth in this paragraph. Grantor shall-not seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s).

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person or entity, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person or entity.; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously identified facilities of the Grantor for a term no shorter than that offered by the other person. If

the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 8(a). Renewable Energy and Conservation. The parties recognize that it is in the best interests of the Grantor, its residents, businesses, and inhabitants thereof to reduce and control the growth rates of electric consumption; to reduce the growth rates of weather-sensitive peak demand; to increase the overall efficiency and cost-effectiveness of electricity production and use; and to encourage further development, installation, and use of demand-side and supply-side renewable energy systems. To that end, Grantor and Grantee agree to use their best efforts to cooperatively work each with the other to promote incentives for customer-owned and utility-owned energy efficiency, energy conservation, demand-side renewable energy intended to offset all or a part of a customer's electricity requirements.

Section 8(b). Grantor may, if permitted by law, (i) generate electric capacity and/or energy at any facility owned by the Grantor for storage or utilization at that facility or other Grantor facilities, operations or equipment; (ii) use renewable energy sources to generate electric capacity and/or energy for use in demonstration projects or at Grantor's facilities, operations or its equipment; and (iii) sell electric capacity and/or energy to Grantee or other wholesale purchaser in compliance with applicable rules and regulations controlling such transactions.

Section 9. Competitive Disadvantage; Termination by Grantee. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee reasonably determines are more favorable than the terms and

conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable and the objective basis or bases of the claimed competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee reasonably determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination of competitive disadvantage leading to termination under this Section 8.

Section 10. Legislative or Regulatory Action. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee reasonably determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and services, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is in the reasonable determination of Grantee not

remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 120 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 120 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is in the reasonable determination of Grantee not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination of competitive disadvantage leading to termination under this Section 9.

Section 11. Default by Grantee; Forfeiture. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 12. Default by Grantor. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than as set forth in Section 2;

(b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 ~~hereof~~only if a court of competent jurisdiction has so determined, after expiration or exhaustion of all rights of appeal, or until such time as a use permit is issued~~ or a court of competent jurisdiction has reached a final determination in the matter.~~ .

Section 13. Grantor's Right to Audit. The Grantor may, upon reasonable notice and no more than once per year, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the preceding year. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 4-~~81.~~81 not asserted in writing by Grantor within two (2) years after the effective date of this Ordinance.

Section 14. Non-Waiver by Grantor. The Grantee recognizes and agrees that nothing in this franchise agreement constitutes, or shall be deemed to constitute, a waiver of the Grantor's rights and powers as provided for by law and not specifically addressed herein.

~~Section 15. Interdependent Provisions. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.~~

Section 15. Severability. Should any section or provision of this Ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part hereof, other than the part declared to be invalid.

Section 16. Person. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 17. Notwithstanding any provision of this Ordinance, nothing herein shall prevent, prohibit or in any way restrict the Grantor's ability to avail itself of all rights under, or to take advantage of all applicable services set forth in, Grantee's tariffs as those tariff are approved from time to time by Grantee's regulators.

Section 18. Conflicting Ordinances. Ordinance No. 4-81, passed and adopted March 27, 1981 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section ~~18.~~19. Condition Precedent; Acceptance by Grantee. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance. Grantee's acceptance shall be in the form as delineated in Exhibit A attached hereto.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 15th day of February 2011, and for second and final reading on this _____ day of _____2011.

_____	_____
Gail L. Coniglio, Mayor	, Town Council President
	_____
	, Town Council President Pro Tem
	_____
	, Town Council Member
	_____
ATTEST:	, Town Council Member
_____	_____
Cheryl Somers, Acting Town Clerk	, Town Council Member

EXHIBIT A

Town of Palm Beach - FPL Electric Franchise
Bryan, Patrick
to:
TBradford@TownofPalmBeach.com
02/03/2011 11:30 AM
Cc:
"Williams, Ethel"
Show Details

History: This message has been replied to.

Tom:

Based on the comments at the Town's Public Works Committee meeting on Tuesday, I have prepared a new redline incorporating the changes requested by the Town. I am happy to report that we were able to obtain management approval for *all* the Town's requests (with the exception, of course, of a buy-out clause.) Several involve changes that FPL has never before given to any other municipality. FPL's approval of these changes is conditioned on assurances from the Town that first and second readings will be held prior to the current franchise's expiration date. A summary of the changes is as follows:

1) We made small corrections in Sections 1 and 2 on page 3 of the document.
2) Based on Skip Randolph's comments, we deleted the "sovereign immunity" language in the Indemnity provision in Section 3 on page 5. We will be happy to re-insert that language if the Town ultimately decides it wants the language included.
3) We deleted " as in the existing franchise Ordinance No. 4-81" from Section 5(a) on page 6.
4) We modified the language in Section 12 (Default by Grantor) to state that FPL may withhold franchise payments based upon a default by the Town *only* after a court has so determined and *only* after expiration of all appeals.
5) We modified Section 13 in accordance with Skip Randolph's request that the Town have two (2) years in which to provide notice of a claim under the expired franchise. As we have previously discussed, if a claim is asserted within that time period, then the applicable statute of limitations (five years) would apply to that claim.
6) We have changed Section 15 to reflect true severability.
7) We have added a new section (Section 17) to provide that nothing in the franchise affects the Towns ability to avail itself of rights and services available under FPL's tariffs.

Tom, I have also modified the "side-letter" to reflect that FPL will work diligently and cooperatively with the Town to formalize a process with respect to vegetation management activities. Please see the redlined version attached showing the changes.

Finally, I have also attached a copy of Florida Statutes Section 73.0715 which provides how electric utility property is to be valued in eminent domain proceedings. As discussed, the Town would have the right to institute condemnation proceedings if it ever wanted to acquire FPL's electric system within the Town.

Please feel free to contact me or Ethel should you have questions or wish to discuss these matters further.

Pat

EXHIBIT A

The Florida Senate

2010 Florida Statutes

Title VI Chapter 73
CIVIL PRACTICE AND PROCEDURE EMINENT DOMAIN

73.0715 **Valuation of electric utility property.**—When any person having the right to exercise the power of eminent domain seeks the appropriation of property used for the generation, transmission, or distribution of electric energy, the jury shall determine solely the amount of compensation to be paid. Such compensation shall include the reproduction cost of the property sought to be appropriated less depreciation, together with going concern value, and, when less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking.

History.—s. 2, ch. 82-53.

EXHIBIT A

DRAFT

Mr. Peter B. Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Florida Power & Light Company (FPL)

Dear Mr. Elwell:

Please accept this letter as acknowledgment and agreement by FPL to the following:

(1) **Vegetation Management.** FPL will work diligently, cooperatively, and in good faith with appropriate Town officials to formalize a process, subject to applicable legal and regulatory requirements, by which FPL will provide advance notice to the Town of planned vegetation maintenance and tree pruning or trimming activities, and by which effective lines of communication between the Town and FPL are established to facilitate resolution of any differences between the parties with respect to those activities. ~~Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within the Town, FPL will use reasonable efforts to provide the official designated by the Town with 30 days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service, perform restoration follow-up, or to avoid an imminent vegetation caused outage or when requested by the property owner.~~

(2) **Undergrounding/Hardening.** Subject to FPL's tariff and Florida Public Service Commission rules, FPL agrees to work cooperatively and collaboratively with the Town with respect to: (a) potential underground conversions of electric distribution facilities and (b) provide information of any planned underground conversions or hardening efforts of FPL's existing overhead facilities within the incorporated areas of the Town. Additionally, FPL will provide annually a copy of its Ten Year Site Plan. Under separate cover, FPL will delineate which underground conversion and/or hardening projects included in the Ten Year Site Plan are applicable to the Town.

FPL has enjoyed an ongoing cooperative relationship with the Town of Palm Beach, and we look forward to a continuing cooperative effort in the future.

Sincerely,

Ethel Isaacs Williams
External Affairs Manager

cc: Patrick M. Bryan, Esquire
Thomas G. Bradford, Deputy Town Manager
H. Paul Brazil, Director of Public Works
John C. Randolph, Town Attorney

TOWN OF PALM BEACH

Town Council Meeting on: February 15, 2011

Section of Agenda
Regular Agenda – New Business

Agenda Title
Parking on Clarke Avenue.

Presenter
H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated February 3, 2011, from H. Paul Brazil, Director of Public Works
- Memorandum dated April 30, 2009, from H. Paul Brazil, Director of Public Works
- Memorandum dated May 29, 2009, from H. Paul Brazil, Director of Public Works
- Memorandum dated July 2, 2010, from Robert Weber, Coastal Coordinator
- Memorandum dated August 5, 2010, from Robert Weber, Coastal Coordinator
- Email dated February 11, 2011, from E. Burke Ross, Jr.
- Letter dated February 4, 2011, from E. Burke Ross, Jr.
- Letter dated February 7, 2011, from Francis A. Shields
- Letter dated February 8, 2011, from Patricia Swindle
- Letter dated February 8, 2011, from Rolando Aguiar
- Letter dated February 10, 2011, from Dr. & Mrs. Gerald M. Lemole

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 15, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Clarke Avenue Parking

Date: February 3, 2011

STAFF RECOMMENDATION

Staff recommends that Council approve a course of action that will allow the Town to remain in compliance with the existing state cost sharing agreements regarding public parking near Clarke Avenue Beach. Further, staff recommends that once the location of these spaces has been determined, they should be maintained at the determined locations for the duration of the agreement (i.e., 10 years from the date of the agreement, which was January 2007 for Grant #06PB4). Staff requests Council's direction on the specific location of the 25 publicly available parking spaces.

GENERAL INFORMATION

A total of 25 publicly available parking spaces need to be provided within a 1/4 mile walking distance from the Clarke Avenue Beach to meet our grant obligations related to previous and future beach nourishment projects. These obligations are detailed in the following section of this report. There are 10 public parking spaces currently located within one-quarter mile of the Clarke Beach Access (4 on Barton Avenue, 6 on the 200 block of Clarke Avenue) that are not in question. This report addresses the remaining 15 parking spaces.

Historically, those 15 spaces were on the 100 block of Clarke Avenue but were restricted to weekdays only. The spaces now comply with the State's requirements by being available for the same hours that the beach is open (7 days per week, 8 am to 6 pm). The location of the 15 spaces has been addressed at 4 previous Town Council meetings. The previous Town Council items are attached for your reference.

The residents on the 100 block of Clarke Avenue are concerned about the impacts to their street created by 15 public parking spaces. Residents have reported that use of Clarke Avenue Beach has increased after the parking rates at Midtown Beach were raised to $5.00 per hour. Reported impacts include noise, litter, obstruction of traffic, and trespassing. Staff has had telephone conversations and meetings with concerned residents and their representatives on several occasions. Residents have also expressed their concerns in writing and those letters are attached.

Grant Obligation

Town Council has consistently directed staff to pursue cost sharing opportunities for coastal projects within the Town. In an effort to maximize cost sharing, Town staff has successfully received State grants to partially offset the large costs of beach management. Specific to Clarke Avenue, prior to the construction of the Mid-Town nourishment in 2003, staff negotiated with Florida Department of Environmental Protection (FDEP) to financially participate with project components including sand searches, design, engineering, and permitting. Because the Clarke Public Beach does not contain 100 publicly available parking spaces, the access qualifies as a *Secondary Beach Access.* In addition to the cost sharing eligibility for the shoreline length at the access site (Clarke Public Beach), secondary beach access eligibility is also granted for up to one-quarter mile both north and south at a rate of 52.8 linear feet per parking space. To achieve the maximum cost share opportunity, 25 parking spaces are necessary to reach the one-quarter mile distance.

With 34 spaces currently located on the 100 block of Clarke Avenue, it is likely that the block did contain more than the 25 publicly available parking spaces referenced in the FDEP grant agreements. However, as noted above, parking in those spaces was prohibited on Saturdays, Sundays, and holidays.

Following a notice of noncompliance from FDEP, staff brought the Clarke Avenue parking matter to Council in May, 2009. Since that meeting, staff has returned to Council on June 9, 2009, July 13, 2010, and August 10, 2010, regarding public parking for the Clarke Public Beach.

FDEP has told Town staff that the intention was to have the spaces located on the 100 block of Clarke Avenue. Language in the Florida Administrative Code allows for the spaces to be located within one-quarter mile walking distance from the access point. Absent of the 100 block of Clarke Avenue, there are ten (10) public parking spaces currently located within the one-quarter mile of the Clarke Beach Access [four (4) on Barton Avenue, six (6) on 200 block of Clarke Avenue].

FDEP staff has informed us that the spaces allocated for public parking should remain consistent for the remaining term of the agreement. Public confusion pertaining to the location of available parking has become a concern for FDEP staff.

Alternatives

Many suggestions have been offered by residents and staff has explored those alternatives. With the assumption that four (4) parking spaces on Barton Avenue and six (6) parking spaces on the 200 block of Clarke Avenue will remain, the following are alternatives that have been offered or developed by staff to address the need for fifteen (15) more publicly available spaces:

1. Lease part of the existing parking lot at Royal Palm Way

The grant requires that parking be within 1/4 mile walking distance from beach access. Even if a new access is developed at the southern end of the park, the easternmost parking spaces are more than 1/4 mile away. Unfortunately this alternative does not provide any relief for the residents on the 100 block of Clarke Avenue. It may however present an opportunity for a public/private venture that could be profitable for the Town and the owner of the parking lot. It may be possible

to develop additional beach parking for the midtown area. This may relieve some of the parking burden on the 100 blocks of other streets adjacent to the beach. Staff will continue to investigate this alternative and will return to Council if warranted.

2. Make South Ocean Boulevard one way and create parallel parking.

South Ocean Boulevard could be made one way either northbound or southbound (with Barton Avenue one way either westbound or eastbound) and parking spaces provided on the travel lane that was no longer to be used. One way southbound would allow use of the existing sidewalk. One way northbound would require construction of a new sidewalk on the east side of the road. The required spaces fit in one block of South Ocean (between Clarke and Barton or between Clarke and Seabreeze). If only a section of the road becomes one way, it would be necessary to divert all interrupted traffic to the next adjacent street. For example, if South Ocean Blvd. was one way northbound between Clarke and Seabreeze, all southbound traffic from Barton would be "detoured" to westbound Clarke Avenue. If South Ocean was one way southbound for the same segment, then all northbound traffic from Royal Palm Way would use either Seabreeze or Seaspray westbound to County Road. For this reason, staff strongly recommends that the one way segment of South Ocean Boulevard include the entire area between Royal Palm Way and Barton Avenue. The traffic flow at Royal Palm Way and County Road will be impacted. A change in the signalization may be required. This will impact many residents that traditionally use this route as opposed to traveling through the midtown area. The traffic pattern for Sunday services at Bethesda by the Sea may also be impacted depending upon the alternative selected.

This alternative affects the fewest number of residents in this neighborhood. It would also be possible to install kiosks if the spaces are grouped together. This alternative has many indirect impacts and is anticipated to be the most expensive. A traffic study will be necessary to fully develop this alternative and to provide a construction cost estimate.

3. Move some spaces to the adjacent streets.

It has been suggested that a new beach access be created at the north end of the park. This will allow more existing spaces on Barton Avenue to fall within the 1/4 mile walking distance. These would be in addition to the 4 existing public spaces.

A different version of this alternative was previously implemented when spaces were moved to Seaspray Avenue and Seabreeze Avenue. The adjacent streets had never had parking available to beach goers. Residents objected strenuously and the spaces were eventually moved back to Clarke Avenue. In this case it will be the addition of spaces as well as a new access that will attract more beach goers.

The advantages of this alternative are that it minimizes the impact to the Clarke Avenue residents and it is relatively inexpensive. The disadvantage is that it is a new impact to the residents of an adjacent street and similar objections are anticipated to those that were expressed in the past.

4. Use the easternmost 15 parking spaces on Clarke Avenue and install parking kiosks.

Grouping the public parking at the east end of the street will minimize foot traffic through the neighborhood and isolate the impact to one area. This would simplify the Police Department's

enforcement effort and reduce the amount of signage on the street, and the related parking kiosks would provide an additional source of income for the Town. The easternmost 10 homes would be directly impacted by this alternative. Currently all the homes in the 100 block are impacted.

The remainder of the road may be eligible for permit parking. A study to be completed by the Police Department will be necessary to determine eligibility. A parking kiosk and waste receptacle can be installed at the north and south corners of Clarke Avenue and County Road.

5. Leave all spaces as they currently are on Clarke Avenue.

Per Town Council's previous direction, the 15 public spaces in the 100 block of Clarke Avenue have been spread out to minimize the impact to the residents and provide at least one regulated on street parking space for each household.

The advantages of this alternative are that there are no costs associated and the residents on adjacent streets will not be impacted. The disadvantages are the Clarke Avenue residents have all of the impact and enforcement is more difficult because the spaces are spread out.

SPECIAL CONSIDERATIONS

Please note that FDEP and Public Works have identified three other locations which now have parking conditions inconsistent with existing grant agreements. These locations include the 100 blocks of Wells Road, Dunbar Road, and Atlantic Avenue. They each currently have "Permit Only" parking. Following resolution of the Clarke Public Beach matter, staff will work with each of these streets to develop a solution for Council consideration. The alternative selected for Clarke Avenue may serve as the template for these other areas.

The residents of Clarke Avenue have requested that the Town ask FDEP to allow some of the excess public parking at and nearby to the Mid-Town Public Beach (which is guarded) to count toward the 25 spaces required for the Clarke Avenue Public Beach (which is not guarded). We have assured them that we will make this request but have asked them to have low expectations since FDEP is enforcing statewide regulations regarding funding assistance and public parking.

FUNDING/FISCAL IMPACT

Council has reaffirmed the Town's commitment to maintain compliance with the grant agreement each time that the topic was discussed. This reaffirmation was made because the Town receives a significant project cost share in exchange for the 25 parking spaces for the Clarke Public Beach (approximately $77,000 per $1 million of project cost). The most recent agreement, 06PB4, had a total project cost of nearly $11 million. The Shore Protection Board's current plan for Mid-Town has a total project cost for design, permitting, and construction in excess of $15 million. If additional mitigation is imposed on the Town, state cost sharing is also applicable and would be affected if parking was reduced/eliminated at the Clarke Public Beach.

If public parking is reduced or eliminated from the Clarke Public Beach, FDEP may request a return of applicable cost sharing funds provided for the previous two (2) nourishment projects at Mid-Town (2003 and 2006). This return of funds could be in excess of $1.5 million. Further, FDEP will recalculate the cost sharing percentage for the next renourishment event and likely reduce the applicable cost sharing funds by at least $1.2 million.

Attachments

cc: Thomas Bradford, Deputy Town Manager
Kirk Blouin, Chief of Police and Acting Chief of Fire-Rescue
Jane Struder, Director of Finance
James Bowser, P.E., Town Engineer
Robert Weber, Coastal Coordinator

TOWN OF PALM BEACH

Information for Town Council Meeting on: May 12, 2009

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Clarke Avenue Access Public Parking

Date: April 30, 2009

STAFF RECOMMENDATION

Staff recommends that Town Council direct Public Works staff to make the necessary changes to parking near the Clarke Avenue Public Park to maintain the current funding eligibility with the Florida Department of Environmental Protection (FDEP). Signage should be corrected to reflect non-restrictive parking to allow for 15 public parking spaces within 1,320 feet of the Clarke Avenue beach access, as outlined in this memo.

GENERAL INFORMATION

To receive funding assistance from FDEP for the periodic nourishment of the Mid-Town beaches, the Town of Palm Beach has previously entered into an agreement with FDEP (No. 00PB1-07PB1). The agreement includes a section on funding eligibility. The amount of funding provided by the State is a direct relationship to the individual project length and the specific project eligiblity. The specific project eligibility is based on areas determined to be publicly accessible.

The agreement recognizes Clarke Avenue Public Park as a public access of 1,976 feet length that contains a total of 25 eligible parking spaces. Per FDEP, the eligible parking spaces are to be sited within 1/4 mile of the public access, or 1,320 feet, and not be restricted from weekends or holidays. In addition, the eligible parking spaces cannot be restricted to "Permit Only."

Following a site visit by FDEP staff in January 2009, FDEP requested that Town Staff review the existing parking situation for the Clarke Avenue public access. Town Staff has completed observations of the parking situation within 1/4 mile of the Clarke Avenue public access and has located only ten (10) spaces in compliance with the FDEP agreement. Four (4) two-hour parking spaces are located on Barton Avenue, within 890 feet of North Ocean Boulevard on the north side of the road. Six (6) two-hour parking spaces are located on Clarke Avenue, west of North County Road, within 1,320 feet of the public beach access. Therefore, 15 spaces, of the 25 required, must be added to the public parking inventory to satisfy the terms of our agreement. In an effort to space out the parking among the streets within the eligible area, staff recommends that the individual spaces to be made accessible include the following:

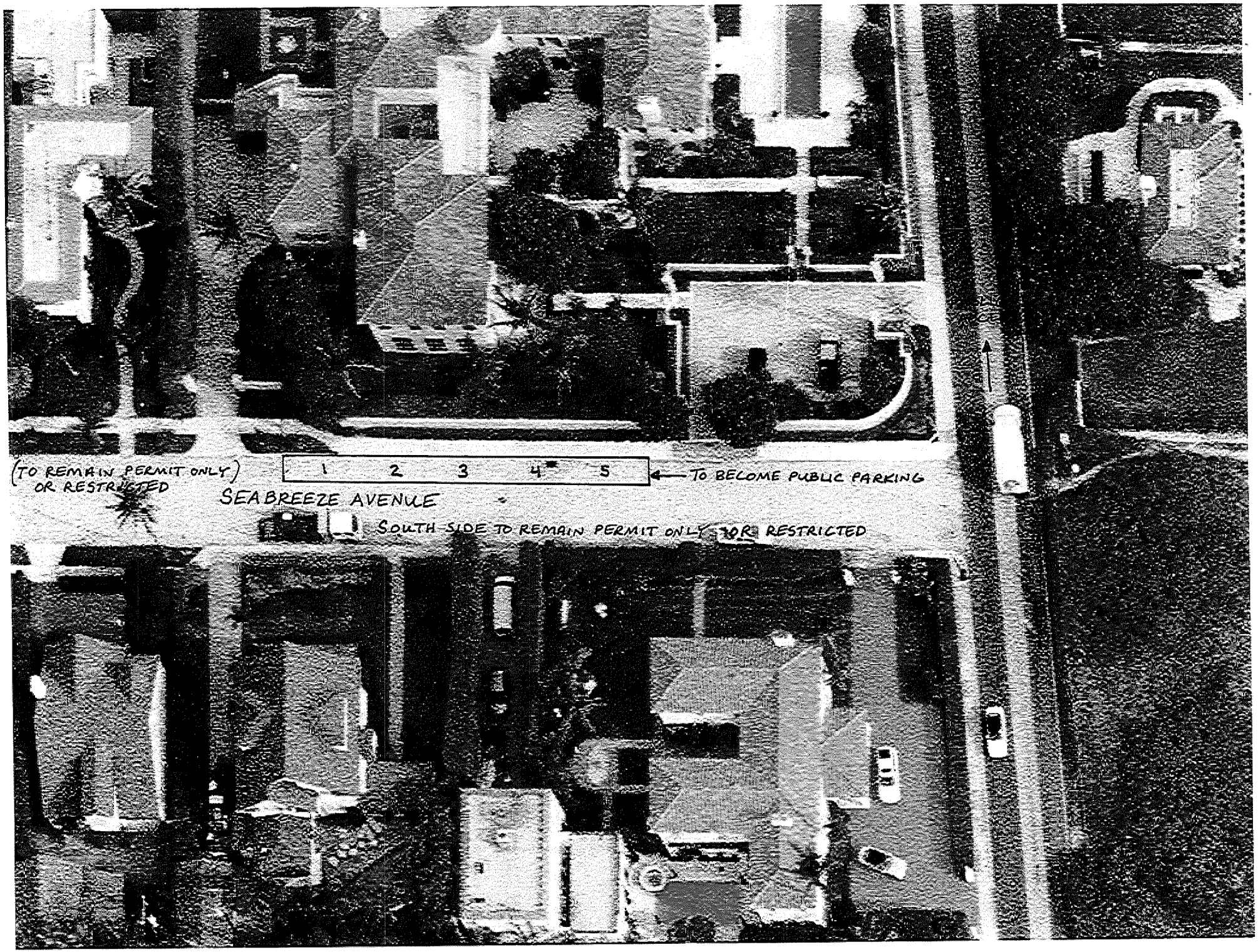
Clarke Avenue 100 Block, North side, Two (2) easternmost spaces
Clarke Avenue 100 Block, South side, Two (2) easternmost spaces
Seabreeze Avenue 100 Block, North side, Five (5) easternmost spaces
Seaspray Avenue 100 Block, North side, Six (6) easternmost spaces
Please refer to the attached illustrations.

FUNDING/FISCAL IMPACT

The Clarke Avenue Public Park access includes 1,976 linear feet of the total eligible shoreline length of 9,320 linear feet. If the Town does not provide the required parking spaces, the total eligible shoreline length will be reduced to approximately 7,344 linear feet. Therefore, the specific project eligibility would be reduced from 72.36% to 57.02%. With 50% weighted eligibility of the specific project eligibility to be cost shared with the State, approximately 7.7% of the total project cost would be ineligible for cost sharing on future Mid-Town nourishment projects (approximately $77,000 for every $1,000,000 of project expenditures). The agreement not only includes the costs associated with the project construction, but also the related engineering, planning, monitoring, and sand searches performed.

HPB:nb
Attachment

cc: Shore Protection Board
Sarah E. Hannah, Assistant Town Manager
James Bowser, Town Engineer
Robert Weber, Coastal Coordinator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OR RESTRICTED
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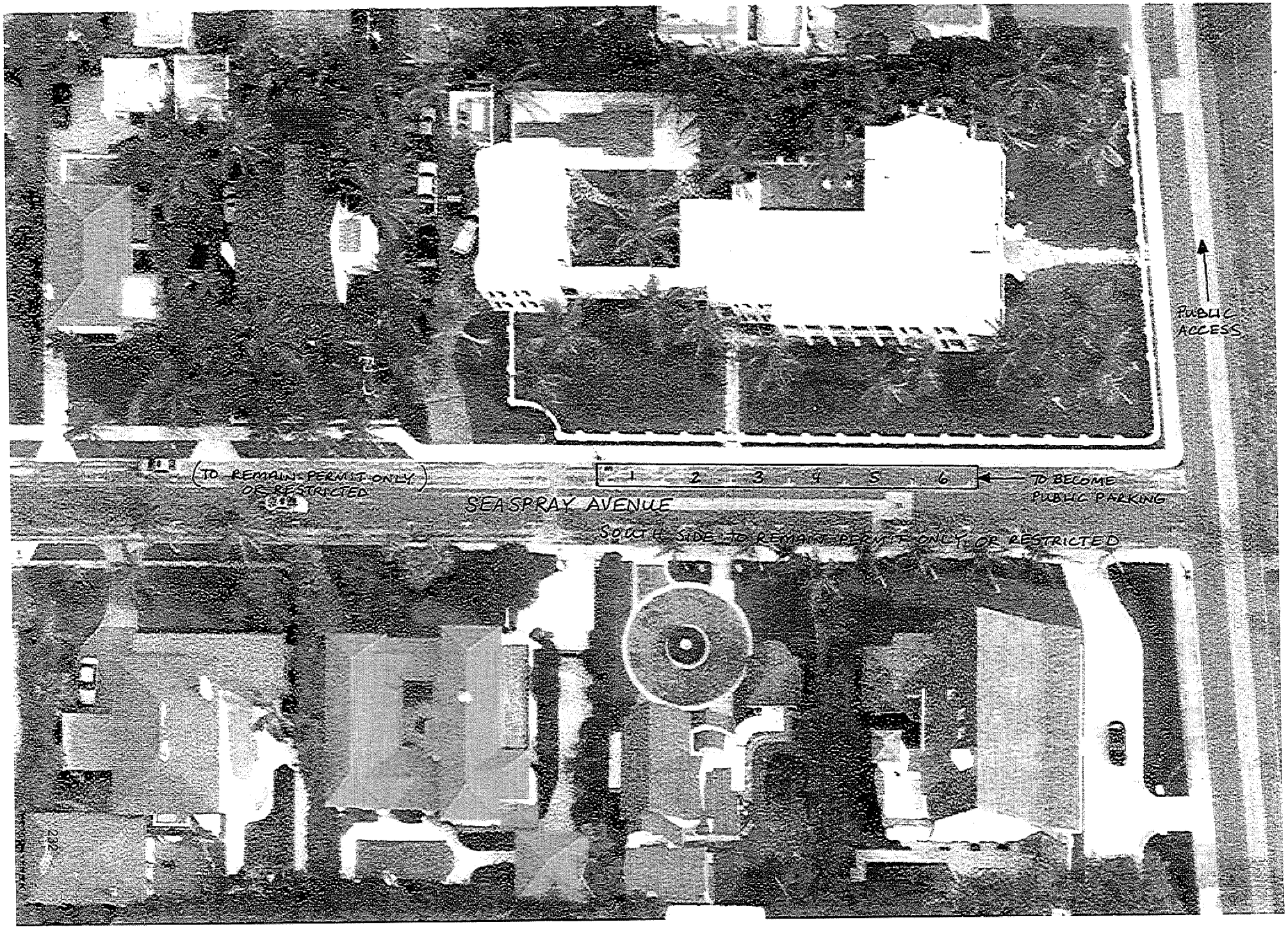
SEABREEZE AVENUE
SOUTH SIDE TO REMAIN PERMIT ONLY OR RESTRICTED


PUBLIC ACCESS
(TO REMAIN PERMIT ONLY OR RESTRICTED)
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TO BECOME PUBLIC PARKING
SEASPRAY AVENUE
SOUTH SIDE TO REMAIN PERMIT ONLY OR RESTRICTED

TO REMAIN PERMIT ONLY
OR RESTRICTED
CLARKE AVENUE
2
NOT A DESIGNATED SPACE
4
TO BECOME PUBLIC PARKING
PUBLIC
ACCESS

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 9, 2009

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Clarke Avenue Access Public Parking

Date: May 29, 2009

STAFF RECOMMENDATION

Staff recommends that Council approve the 15 parking spaces as illustrated on the attached street aerials. The parking spaces are recommended to be distributed between all three (3) impacted streets as follows:

Eight (8) on Clarke Avenue
Four (4) on Seabreeze Avenue
Three (3) on Seaspray Avenue

The public parking locations are to be placed in a manner that avoids eliminating street parking for homes that have only one space. This causes the public spaces to be sited in various locations, independent of one another and may potentially complicate parking enforcement, but is preferable for the homeowners.

GENERAL INFORMATION

Staff recommend that the Town Council approve a recommendation outlining the specific locations of 15 publicly accessible parking spaces on Clarke Avenue (4 spaces), Seabreeze Avenue (5 spaces), and Seaspray Avenue (6 spaces). This arrangement of the parking spaces was determined based on the existing layout of the available parking spaces at the east side of each of these streets. The 15 spaces are necessary to restore FDEP funding eligibility.

Staff met with the residents on each of the three (3) impacted streets, between May 19-21, 2009. In addition to the publicly noticed meetings, Paul Brazil and Robert Weber attended a Seaspray neighborhood meeting in which many residents attended. Most of the Seaspray residents in attendance agreed that they would accept some responsibility to account for a portion of the 15 required spaces. Due to the availability of the eligible parking spaces based on distance from the public access, several residents suggested to have the number of parking spaces split up between the three (3) impacts streets in a gradual manner and that they would account for up to three (3) public parking spaces. The Seaspray residents in attendance requested that the spaces not be located all together, rather be split up to be sited in front of residences with more than one available parking

space. This is the basis for Staff's recommendation to Council.

The following information documents the results of the publicly noticed meetings:

Clarke Avenue

A notice was provided to the residents at Clarke Avenue on Friday, May 15, 2009. The meeting was held at 9:00 am on Tuesday, May 19, 2009. Mr. Weber remained at the meeting site between 8:45 and 9:30 am that morning. Only one member of the public attended, an apparent representative for 137 Clarke. She informed Mr. Weber that the 137 Clarke homeowner would request that the parking spaces be located at the east end of the street.

Seabreeze Avenue

A notice was provided to the residents at Seabreeze Avenue on Friday, May 15, 2009. The meeting was held at 9:00 am on Wednesday, May 20, 2009. Mr.Weber remained at the meeting site between 8:45 and 10:00 am that morning. One resident, Ron Dollens, 111 Seabreeze, attended the meeting. Mr. Weber informed him that the Seaspray homeowners had suggested a graduated approach to the parking on the three (3) impacted streets, rather than dividing them equally. As a response, rather than having five (5) spaces on Seabreeze Avenue, Mr. Dollens suggested four (4) spaces to be placed; two (2) on the north side, adjacent to the 190 S. Ocean Blvd. residence, and two (2) on the south side, adjacent to the 200 S. Ocean Blvd. residence. Laura Kent, 140 Seabreeze, phoned Public Works while Mr. Weber was still onsite for the meeting. Mr. Weber was notified and spoke with Ms. Kent before returning to Public Works. Ms. Kent expressed her concerns for having public parking spaces on Seabreeze. She was informed by Mr. Weber that staff would be preparing a recommendation to Town Council for four spaces, rather than five. Ms. Kent requested that the spaces be placed toward the east end of the street.

Seaspray Avenue

A notice was provided to the residents at Seaspray Avenue on Friday, May 15, 2009. The meeting was held at 9:00 am on Thursday, May 21, 2009. Mr. Weber remained at the meeting site between 8:45 and 9:25 am that morning. Two residents, Katie Pressly, 133 Seaspray, and Alicia DeRossa, 168 Seaspray, attended the meeting. Both residents were understanding of the street being responsible for three (3) public parking spaces. A suggestion to place the spaces at the east end of the street was made; One (1) space on the north side and two (2) on the south side. Ms. Pressley suggested that if two spaces were to be used on the south side of the street, adjacent to the hedge at 224 S. Ocean Blvd., that they be shifted eastward approximately three (3) feet as to not be within the immediate viewing of the 110 Seaspray residents.

In addition to the various meetings, several residents provided both email and phone communication to Town staff. The following residents have corresponded via phone or email, objecting to the placement of public parking on their respective streets:

Richard Myers, 152 Seabreeze
Robert Garrison, 156 Seabreeze
Katherine McLennan, 165 Seabreeze
Julie Reveley, 200 S. Ocean Blvd. (Seabreeze)
Lily Rovin, 140 Seaspray
Sue Strickland, 145 Seaspray
Wayne Garrison, 127 Seaspray and 212 S. Ocean Blvd.

FUNDING/FISCAL IMPACT

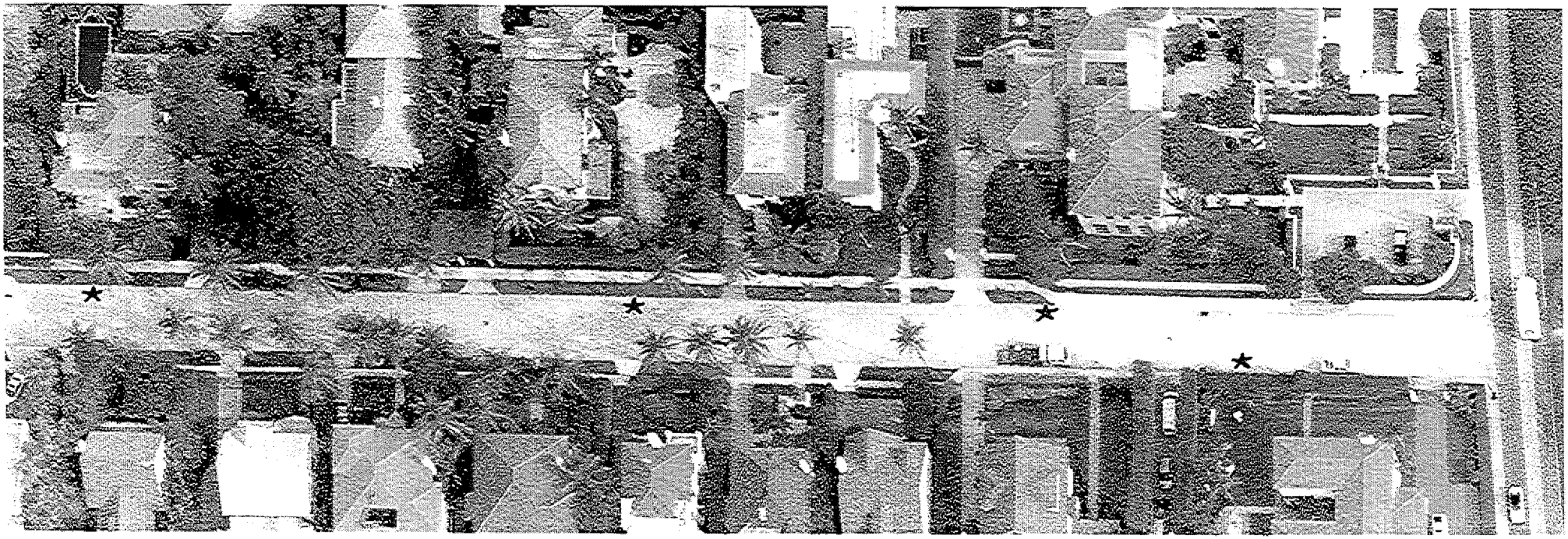
There are anticipated costs to making appropriate changes to the signage and installing new signage on Clarke, Seabreeze, and Seaspray avenues. These costs are minor and can be paid for from the existing Public Works operating budget.

Attachments

cc: Shore Protection Board
Sarah E. Hannah, Assistant Town Manager
James Bowser, Town Engineer
Robert Weber, Coastal Coordinator

CLARKE AVENUE - 8 spaces

South Side	North Side
Use 1 of 4 spaces at 150 Clarke Avenue	Use 1 of 3 spaces at 161 Clarke Avenue
Use 1 of 2 spaces at 124 Clarke Avenue	Use 1 of 2 spaces at 153 Clarke Avenue
Use 1 of 2 spaces at 172 S. Ocean Blvd.	Use 1 of 2 spaces at 149 Clarke Avenue
	Use 1 of 3 spaces at 113 Clarke Avenue
	Use 1 of 2 spaces at 150 S. Ocean Blvd.



SEABREEZE AVENUE - 4 spaces

South Side	North Side
Use 1 of 3 spaces at 200 S. Ocean Blvd.	Use 1 of 6 spaces at 190 S. Ocean Blvd.
	Use 1 of 4 spaces at 133 Seabreeze
	Use 1 of 3 spaces at 147 Seabreeze

SEASPRAY AVENUE - 3 spaces

South Side	North Side
Use 1 of 2 spaces at 114 Seaspray Avenue	Use 1 of 7 spaces at 212 S. Ocean Blvd.
Use 1 of 2 spaces at 224 S. Ocean Blvd.	

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Robert Weber, Coastal Coordinator

Re: Clarke Avenue Beach Access Public Parking

Date: July 2, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council review the suggested alternative and general information, offer comments/concerns, and then defer any decision for the Clarke Avenue beach access parking configuration until the August meeting. The additional time will provide staff with the ability to reach out to the affected Clarke Avenue property owners and receive feedback on the possible solution.

SUGGESTED ALTERNATIVE

Replace the seven public parking spaces [three (3) spaces on Seaspray Avenue and four (4) spaces on Seabreeze Avenue] and return them to "Permit Only" parking.

Adjust seven (7) of the 26 weekend restricted public parking spaces on Clarke Avenue to allow for use on Saturdays and Sundays. This alternative, if adjusting three (3) spaces on the north side and four (4) spaces on the south side of Clarke Avenue, would still accommodate 19 weekend restricted parking spaces to service the 17 properties on the 100 Block of Clarke Avenue. The location of the spaces could be identified with input by the Clarke Avenue residents. This scenario will provide at least one (1) space per property to be restricted from public use on the weekends. Of the 34 parking spaces on the 100 Block of Clarke Avenue, 15 spaces would permit public parking on Saturdays and Sundays. The current configuration allows 8 of the 34 spaces public parking on Saturdays and Sundays.

GENERAL INFORMATION

State Grant Cost-Share Assistance

To receive funding assistance from FDEP for the periodic nourishment of the Mid-Town beaches, the Town of Palm Beach has previously entered into an agreement with FDEP (No. 00PB1-07PB1). The agreement includes a section on funding eligibility. The amount of funding provided by the State is a direct relationship to the individual project length and the specific project eligibility. The specific project eligibility is based on areas determined to be publicly accessible.

The agreement recognizes Clarke Avenue Public Park as a public access of 1,976 feet in length that contains a total of 25 eligible parking spaces. Per FDEP, the eligible parking spaces are to be sited within 1/4 mile of the public access, or 1,320 feet, and not be restricted from weekends or holidays. In addition, the eligible parking spaces cannot be restricted to "Permit Only."

Parking Configuration Prior to 2009 Town Council Actions

Following a site visit by FDEP staff in January 2009, FDEP requested that Town Staff review the existing parking situation for the Clarke Avenue public access. Town Staff completed observations of the parking situation within 1/4 mile of the Clarke Avenue public access and located only ten (10) spaces in compliance with the FDEP agreement. Four (4) two-hour parking spaces were located on Barton Avenue, within 890 feet of North Ocean Boulevard on the north side of the road. Six (6) two-hour parking spaces were located on Clarke Avenue, west of North County Road, within 1,320 feet of the public beach access.

May 2009 Community Meeting Results

Staff met with the residents on each of the three (3) impacted streets, between May 19-21, 2009. In addition to the publicly noticed meetings, Paul Brazil and Robert Weber attended a Seaspray neighborhood meeting in which many residents attended. Most of the Seaspray residents in attendance agreed that they would accept some responsibility to account for a portion of the 15 required spaces. Due to the availability of the eligible parking spaces based on distance from the public access, several residents suggested to have the number of parking spaces split up between the three (3) impacts streets in a gradual manner and that they would account for up to three (3) public parking spaces. The Seaspray residents in attendance requested that the spaces not be located all together, rather be split up to be sited in front of residences with more than one available parking space. Results from the meeting was the basis for Staff's June 9, 2009 recommendation to Council.

June 2009 Town Council Action

Town Council accepted staff recommendations (with the stipulation to revisit the matter if there were repercussions) to distribute between all three (3) impacted streets as followed: Eight (8) on Clarke Avenue, four (4) on Seabreeze Avenue, and three (3) on Seaspray Avenue.

The public parking locations were to be placed in a manner that avoids eliminating street parking for homes that have only one space. This causes the public spaces to be sited in various locations, independent of one another and may potentially complicate parking enforcement, but is preferable for the homeowners.

2010 Conditions

Based on a series of complaints received by several Seaspray Avenue property owners, the configuration implemented in 2009 has negatively affected their street. The homeowners on Seaspray Avenue developed an agreement with the easternmost property to allow private beach access for the residents along the street. This private access has been utilized by the public, causing litter matters

and disrupting the street atmosphere. The Seaspray Avenue residents feel that replacing the public parking spaces from Seaspray back to "Permit Only" would minimize disruption opportunities.

Additional Quick Facts

- According to the *Atlas of Palm Beach*, by Robert E. Owen & Associates, Inc., dated August 1984, the Right-of-Way for Clarke Avenue is 56 feet wide and both Seabreeze Avenue and Seaspray Avenue are 52.5 feet wide. However, the asphalted sections (curb to curb) are nearly identical for Clarke, Seabreeze, and Seaspray at 30 feet wide.

- The "no parking" sections at the east ends of Clarke, Seabreeze, and Seaspray, denoted with curbs painted yellow, extend an average 79 feet from Ocean Boulevard. The north side of Clarke Avenue is painted yellow a distance of 150 feet from Ocean Boulevard.

- There are 34 parking spaces located on the 100 Block of Clarke Avenue:

  North Side - There are nine (9) residences. The north side of the street includes a total of 16 public parking spaces with 2-hour time limits. 13 public parking spaces have the restriction of "No Parking" on Saturday and Sundays. Five (5) spaces on the north side of Clarke Avenue are 2-hour parking without the weekend restriction.

  South Side - There are eight (8) residences. The south side of the street includes a total of 18 public parking spaces. 15 public parking spaces have the restriction of "No Parking" on Saturday and Sundays. Three (3) spaces on the south side of Clarke Avenue are 2-hour parking without the weekend restriction.

- All parking spaces on Seaspray and Seabreeze Avenues, except for the seven (7) changed last year, are "Permit Only."

- Having all the public parking spaces on Clarke Avenue to service the Clarke Avenue public beach access would clear up confusion for both public beachgoers and parking enforcement.

FUNDING/FISCAL IMPACT

The Clarke Avenue Public Park access includes 1,976 linear feet of the total eligible shoreline length of 9,320 linear feet. If the Town does not provide the required parking spaces, the total eligible shoreline length will be reduced to approximately 7,344 linear feet. Therefore, the specific project eligibility would be reduced from 72.36% to 57.02%. The state pays for 50% of the costs for the area that meets specific project eligibility criteria. Therefore, if the Town fails to meet the FDEP's parking requirements in this area, state funding assistance would be reduced by approximately 7.7% of the total project cost (approximately $77,000 for every $1,000,000 of project expenditures). The state not only shares the costs associated with the project construction, but also the related engineering, planning, and monitoring performed.

There are anticipated costs to making appropriate changes to the signage and installing new signage on Clarke, Seabreeze, and Seaspray Avenues. These costs are minor and can be paid for from the existing Public Works operating budget.

cc: Shore Protection Board
Tom Bradford, Deputy Town Manager
Jay Boodheshwar, Acting Director of Public Works
Clarke Avenue Residents

Re: Pamela and Wayne Garrison/Public Parking on Seaspray Ave.
Peter B Elwell Pamela P. Garrison 06/30/2010 07:35 AM
Jay Boodheshwar, Robert Weber, Kirk Blouin

Mr. and Mrs. Garrison -

I am forwarding your email to the Mayor and Town Council, as you requested.

In addition, this matter will be considered during the Town Council meeting on July 13. Staff is working on possible solutions. I understand from your email that you are out of town for the summer, but if you are in contact with any of your neighbors who might be able to attend and participate in the July 13 meeting, please encourage them to do so.

Peter B. Elwell
Town Manager
Town of Palm Beach
561-838-5410

c: M&TC

"Pamela P. Garrison" This letter is in regard to the public parking pl... 06/29/2010 07:28:02 PM

From: "Pamela P. Garrison" <pdpgarrison@aol.com>
To: pelwell@townofpalmbeach.com
Date: 06/29/2010 07:28 PM
Subject: Pamela and Wayne Garrison/Public Parking on Seaspray Ave.

This letter is in regard to the public parking places on Seaspray Avenue.
Our residence is located on the north side of Seaspray Avenue at Ocean Blvd.
Our address is: 212 South Ocean Blvd.

Dear Mr. Elwell,
Wayne and I lived at 127 Seaspray for three years before we purchased and built our home on the
vacant lot next to us at 212 South Ocean. The Permit Parking only made a huge difference to our street and this corner.
This area was quiet and very attractive for us to build a home.

Our plan was to keep the beach in its natural state so that all of the
residences of Seaspray could enjoy the nice open view to the ocean.
We also made the decision not to wall in our home with the ficus bushes because this would close in our wonderful street.

I had no idea that opening up the few parking places to public parking would have the impact that it has
had on the street, our property and the flow of traffic.

My desk is located on the second floor, the Seaspray and Ocean corner of our home, and I see a lot of things that
go on during the day.

Last week, we filed a police report for destroying our property. Someone wrote a note

and drew flowers on our perimeter wall.
People change their clothes at their car and the men do not hesitate to be completely naked.
They leave their trash on our fence and the sidewalk.
One man changed his battery and left it there on the sidewalk.
They stand on our fence and take pictures of the ocean.
They tie their bikes up to the signs and leave baby strollers standing on our property at the entrance to the private beach access.
The noise level has increased at night. They party on that part of the beach.
We do have increased congestion on what is a fairly narrow street. The loading and unloading of picnic and beach equipment spills out
into the street and blocks the sidewalk.
We look like the metered area along the Public Beach. At times you have to cross the street to walk down the sidewalk.
They see the Public Parking sign as having rights to everything around it.

The Public Parking has definitely brought a change to our street and that corner.

Wayne and I would appreciate whatever you can do to help our situation. It would be wonderful to have our street the way is used to be.

I would appreciate you passing along our letter of concern to the Mayor and the Town Council.

Thank you very much.
Pam and Wayne Garrison
Wayne and I are at our home in Wyoming for the summer.
Wayne Garrison cell # 479 236 4003
Pamela Garrison cell # 479 236 4002

SEA STREETS ACCESS ASSOCIATION, INC.
150 SEASPRAY AVENUE
PALM BEACH, FLORIDA 33480

June 16, 2010

Mr. Robert Weber
Public Works Department
Town of Palm Beach
Post Office Box 2029
Palm Beach, Florida 33480

Dear Mr. Weber:

I write to you on behalf of the Sea Streets Access Association, Inc. (the "Association"). The Association, which is comprised of over 200 homeowners from the three "Sea" streets in Palm Beach, was formed in 1991 to provide a private easement for its members to access the beach located at the east end of Seaspray Avenue. The Association's members have continuously enjoyed use of their easement.

However, recent changes to the parking restrictions on Seaspray Avenue have resulted in a serious compromise in the use and enjoyment of the easement by its members. Commencing last year, three parking spaces at the eastern end of Seaspray Avenue were changed from permit only parking to public parking. Our understanding is that this was done in connection with providing additional public parking for the public beach at Clarke Avenue. However, the unintended consequences of this change has resulted in the general public's use of our private easement to access the beach rather than proceeding the several blocks to the public beach at Clarke Avenue.

When some of us met with you last year to discuss the Town's plans to change these parking spots, it appeared to be appropriate to equitably allocate these public parking spaces among the several streets located near the Clarke Avenue public beach. However, it is abundantly evident that those people utilizing the public parking spaces on Seaspray Avenue do not travel to the Clark Avenue beach, but rather use our private easement. Moreover, these public parking spaces have resulted in a substantial increase in non-authorized parking in nearby spaces. This improper use of private property has resulted in excess trash and debris deposited on our easement and adjoining private property. This situation is unacceptable and a solution must be immediately implemented.

We remain available to further discuss this matter with you but do not believe a viable alternative exists other than returning the parking places in question to permit only spots. Please call or e-mail either David Scaff (tel: 514-4900; e-mail: dscaff@lydianbank.com) or me (tel: 659-0757; e-mail: gwoodfield@haileshaw.com) at your earliest convenience to discuss how the Town is going to resolve this situation.

(Client Files\ADMIN\001\00066504.DOCX V1)

Thank you for your attention to this matter.

Very truly yours

SEAS STREETS ACCESS ASSOCIATION, INC.

By: _____
Gary A. Woodfield
Its: Treasurer

cc: Hon. Jack McDonald, Mayor
Hon. Davis A. Rosow
Hon. Gail Coniglio
Hon. William J. Diamond
Hon. Richard M. Kleid
Hon. Robert N. Wildrick
David Scaff

Fw: Please forward to the Mayor and Town Council re: Seaspray Parking

Peter B Elwell 07/02/2010 05:32 PM

Jay Boodheshwar, Robert Weber, Kirk Blouin, Cheryl Kleen

c: M&TC (FYI)

----- Forwarded by Peter B Elwell/PalmBeach on 07/02/2010 05:32 PM -----

From "Peter D. Moor" <peterm@moorarch.com>
To <pelwell@townofpalmbeach.com>
Date 07/01/2010 07:49 AM
Subject Please forward to the Mayor and Town Council re: Seaspray Parking

Moor & Associates, Architects, P.A.
2928 Cardinal Drive
Vero Beach, Fl 32963
p. 772-231-0463 f. 772-234-3674
www.moorarch.com

June 30, 2010

The Honorable Jack McDonald, Mayor of the Town of Palm Beach
and Members of the Palm Beach Town Council
c/o Mr. Peter Elwell, Town Manager
Town of Palm Beach
Via Email pelwell@townofpalmbeach.com <mailto:pelwell@townofpalmbeach.com>

RE: Seaspray Avenue Parking

Dear Mayor McDonald and Palm Beach Town Council Members:

As the Architect for the Garrison Residence, 212 S. Ocean Blvd., I am writing the Town of Palm Beach Town Council to express the sensitivity to the neighborhood the Garrison's brought to this project and the fact that it was applauded by the ARCOM. I was shocked to learn how the parking regulations have changed, which is in direct opposition to the planning and architecture encouraged by the Town of Palm Beach.

The Garrison's vision for the design of their current residence came from the experience of living in the adjacent house on Seaspray Ave. There they appreciated the comings and goings of the Seaspray neighborhood and made a conscious decision against building a walled or hedged compound and to leave the portion of their property on the east side of S. Ocean Blvd. undeveloped.

This design was praised by ARCOM as a "gift to the neighborhood" for several reasons: maintaining the openness of the corner, maintaining a view of the ocean for all to enjoy and creating an architecture with porches open to the street. All of these elements were commended for providing a civic and friendly statement appropriate to fostering a sense of neighborliness.

To support the unfortunate adage of "no good deed goes unpunished," the change of parking rules has negated the gesture of openness and community toward the neighborhood. The new parking immediately destroyed this sense

of neighborhood. It is puzzling that with no public amenities or commerce in the area that the need for this parking trumps the civic neighborhood values.

As an architect and planner I would urge the Town Council to reassess the decision to change parking at the east end of Seaspray Avenue and to support regulations that are neighborhood friendly in lieu of transient parking convenient.

Respectfully,

Peter D. Moor
Architect

PDM:sd

winmail.dat

TOWN OF PALM BEACH

Information for Town Council Meeting on: August 10, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

Via: H. Paul Brazil, P.E., Director of Public Works

From: Robert Weber, Coastal Coordinator

Re: Clarke Avenue Beach Access Public Parking

Date: August 5, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council review the general information and decide on the siting of the parking spaces on Clarke Avenue or consider deferral until December 2010.

If the item is deferred, staff recommends that the Town Council provide affirmation that the Town will maintain the existing minimum 25 public parking spaces, within 1/4 mile of the Clarke Avenue Beach Access as indicated within the grant agreement with the State of Florida, as requested by FDEP.

GENERAL INFORMATION

Last month, Town Council took action to replace the seven public parking spaces [three (3) spaces on Seaspray Avenue and four (4) spaces on Seabreeze Avenue] and return them to "Permit Only" parking, with the intention of placing the seven (7) spaces back onto Clarke Avenue.

As directed by Town Council, staff reached out to the property owners adjoining Clarke Avenue, 100 Block, to provide the residents with an opportunity to specifically site the seven (7) spaces to be placed back onto Clarke Avenue. Each of the 17 adjoining properties received a notice by U.S. mail to the mailing address listed on Palm Beach County's property appraiser website.

Meetings on Clarke Avenue

In an effort to give multiple opportunities to the Clarke Avenue 100 Block residents, two (2) field meetings were scheduled. One was at 9:00 am on Monday, August 2, 2010, and the other was at 5:00 pm on Wednesday, August 4, 2010. The following attendees were present:

August 2, 2010
William Diamond, Town Council Member
Miriam Denham, representing Burke Ross at 172 S. Ocean Ave.
Bob Forbes, 171 Clarke Ave.

Dee Dee Shields, 149 Clarke Avenue
Roger Warwick, representative for The Lawsons at 114 Clarke Ave.
Major Rick Howe, Palm Beach Police Department
Raychel Houston, Parking Enforcement Manager, Palm Beach Police Department
Robert Weber, Coastal Coordinator, Town of Palm Beach

August 4, 2010
William Diamond, Town Council Member
Laura Wissa, 156 Clarke Ave.
Shakir Wissa, 156 Clarke Ave.
Raychel Houston, Parking Enforcement Manager, Palm Beach Police Department
Robert Weber, Coastal Coordinator, Town of Palm Beach

During the meetings, Town staff provided information to the residents concerning parking implications related to the coastal projects in the Mid-Town area. In general, the following information was conveyed:

- The Town is to maintain 25 spaces within a 1/4 mile of the Clarke Avenue Beach Access as an obligation for the ongoing renourishments of Mid-Town beaches.
- The parking spaces mentioned within the grant agreement were historically located on Clarke Avenue.
- All spaces on Clarke Avenue are currently open to the public, Monday through Friday.
- No parking is currently open to the public on Clarke Avenue during holidays and weekends, except for the eight (8) spaces placed back in 2009.
- Between 1995 and 2008, parking adjustments were made by various staff departments to accommodate concerns by residents.
- FDEP staff checked the status of the parking spaces in 2008 and noticed that of the 25 spaces required, only 10 spaces were found in compliance.
- In order to spread the discomfort amongst the three neighboring streets, Town staff suggested and Town Council approved a trial plan in 2009 to place eight (8) public parking spaces back onto Clarke Avenue, four (4) on Seabreeze Avenue, and three (3) on Seaspray Avenue.
- After nearly one year of the trial plan, after continued concerns by the residents on the Seabreeze and Seaspray Avenues, was requested to re-evaluate the parking situation for the Clarke Avenue Beach Access.
- The Seabreeze and Seaspray Avenues have historically been "Permit Only."
- Other Beach Access Points adding to the State cost share eligibility of Mid-Town include: Wells Road, Dunbar Road, Atlantic Avenue, Sunset Avenue, and Mid-Town Municipal Beach.

Reaction By Clarke Avenue Residents

With concerns including safety, traffic congestion, litter, and trespassing, the Clarke Avenue residents were not comfortable with increasing the number of spaces open to the public from eight (8) to 15. The attendees of both meetings were unanimous in requesting additional time to include input from seasonal residents.
The Clarke Avenue residents requested that a uniform time limit for parking in the afternoon be

implemented. Presently, some parking spaces are open to the public until 5:30 pm and others are open until 6:00 pm. Those that qualify for public beach parking are open until 6:00pm.

A resident who could not attend either of the two (2) scheduled meetings has submitted a letter of concern to Town staff. Attached is a copy of the letter.

SPECIAL CONSIDERATIONS

On August 5, 2010, the Coastal Coordinator had a follow up conversation with FDEP concerning the signage requirements at Clarke Avenue Beach. The existing signs on Clarke Avenue that do count toward the required total allow parking from 9:00am to 6:00pm. The beach is currently signed as opened between 8:00am and 8:00pm. Unfortunately, the signage needs to be consistent. This conversation occurred after the two meetings with the residents in the area. The residents are not aware of this new consideration.

Two alternatives exist. First, it is possible to change the signs on the streets to increase the hours available to beach goers. Alternatively, it is permissible to change the hours that the beach is open to be consistent with the street signs. Unless directed otherwise, staff will modify the beach hours to 9:00am until 6:00pm.

FUNDING/FISCAL IMPACT

There are anticipated costs to making appropriate changes to the signage and installing new signage on Clarke, Seabreeze, and Seaspray Avenues. These costs are minor and can be paid for from the existing Public Works operating budget.

RW:mrs

Attachment

cc: Shore Protection Board
Clarke Avenue Residents
Kirk Blouin, Chief of Police

114 Clarke Ave.
Palm Beach, FL 33480
August 4, 2010

Mr. H. Paul Brazil
Director of Public Works Department
Town of Palm Beach
Palm Beach, FL 33480

Dear Mr. Brazil,

I understand there are federal funds at stake for a beach that serves the entire community, not just Clarke Ave. Our street may have the entrance to the beach, an entrance which also serves as a loitering and littering venue, but the beach funds serve all citizens. Clarke Avenue should not have to endure any more hardship by the 2009 law being changed just because other streets have the same problems. As a matter of fact, we have these problems, and more during the work week, with Seaspray's and Seabreeze's contractors parking on our street.

Beachgoers continually trespass on our property by using our pool, our garden hose and our driveway. On Clarke Ave., we experience the same trespassing, littering, loud noise, people changing in and out of their bathing attire in plain view as on Seabreeze and Seaspray. Surfers appear to have no problem leaving their boards blocking the street and sidewalk and car door wide open blocking traffic. These are ENFORCEMENT issues, not parking issues. The staff appears to be recommending moving the problem from the other streets and throwing it all on Clarke Ave.

Has anyone suggested making South Ocean one way northbound so that people can park closer to the beach and not be tempted to trespass and litter so close to our homes? If the Town can make South Ocean one way for the church, can't the Town do it to save the federal funds and keep most of the citizens less inconvenienced? I would truly like to know your thoughts on this suggestion.

I will await your response to my comments. The suggested alternative is an outrage, making Clarke Avenue a parking lot and making Seabreeze and Seaspray private and exclusive. Why not make a few spaces on Clarke Ave. permit only spaces? It is impossible to park on our street and we could use a few permit only spaces.

Again, just because Clarke in closest to the entrance on South Ocean, does not mean we benefit more or should suffer more.

Very truly yours,

Roger A. Lawson

X. PUBLIC HEARINGS

A. RESOLUTION NO. 89-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Removal of a Historic or Specimen Tree from a Property Located Within the Town of Palm Beach; Providing for the Recording of Said Dedesination; and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County
[H. Paul Brazil, Director of Public Works]
ACTION: APPROVED

XI. REGULAR AGENDA

A. Old Business

1. Public Parking for the Clarke Avenue Beach Access.
[H. Paul Brazil, Director of Public Works]
ACTION: DIRECTED STAFF TO MOVE THE 7 SPACES BACK TO CLARKE AVENUE WITHIN THE NEXT FEW WEEKS WITH THE HOURS OF PUBLIC PARKING AND THE BEACH ACCESS HOURS BOTH TO BE FROM 9 AM TO 6 PM. ALSO EVALUATE THE INSTALLATION OF KIOSKS WITH ALTERNATING RESIDENT PERMIT PARKING AT THIS AND OTHER LOCATIONS.

2. RESOLUTION NO. 93-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the Florida Department of Environmental Protection, Beach Erosion Control Program.
[H. Paul Brazil, Director of Public Works]
ACTION: APPROVED

3. RESOLUTION NO. 84-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for $216,329 to Community Asphalt Corporation, for the Annual Roadway Paving and Resurfacing, Establishing a Total Budget of $250,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements. [H. Paul Brazil, Director of Public Works]
ACTION: APPROVED

To:
Cc
Bcc:
Subject: Clarke Avenue Ocean Block Public Parking

"Burke Ross" Dear Mr. Elwell, 02/11/2011 11:19:43 AM

From: "Burke Ross" <burke@eburkerossjr.com>
To: <pelwell@townofpalmbeach.com>
Cc: <pbrazil@townofpalmbeach.com>, <tbradford@townofpalmbeach.com>, <RWeber@TownofPalmBeach.com>
Date: 02/11/2011 11:19 AM
Subject: Clarke Avenue Ocean Block Public Parking

Dear Mr. Elwell,

Many thanks to you and your staff for taking the time to meet with our group to discuss the Clarke Avenue Ocean Block Residents' problems and concerns with the recent parking regulation changes on the block and how they are negatively affecting the quality of life on weekends, posing serious safety threats and negatively impacting property values.

The Clarke Avenue Ocean Block Residents are committed to constructively being a part of the solution rather than regressing into one block versus another block divisiveness.

We believe that the best solution for all of the Midtown Palm Beach residential district is the one that preserves the status quo that existed before the Town entered into the Agreement with the Florida Department of Environmental Protection (FLDEP) which requires 25 public parking spaces 7 days a week within a ¼ mile distance of the access point to Clarke Avenue Beach. As we discussed, the status quo for as long as anyone can remember on the Clarke Avenue Ocean Block was no parking of any type permitted on weekends. We believe strongly that this status quo is consistent with the terms of the gift of Clarke Avenue Park by the Clarke Family to the Town of Palm Beach in 1917 wherein the access point to Clarke Avenue Beach was specifically not included in the gift with the obvious intent that the public could enjoy the beach but would access it through some other point, presumably by walking down from the Midtown Beach.

The ideal solution would therefore return the Ocean Block of Clarke Avenue to no parking on weekends and would not alter the status quo that also existed in 2009 on the ocean blocks of Seabreeze and Seaspray, e.g. permit only parking.

At yesterday's meeting we encouraged the Town to try to find as much parking on or around South Ocean Boulevard at the Midtown Beach because it is this beach that is truly the real public beach. It has ample parking, it has been recognized by the public as Palm Beach's public beach and it has lifeguards which the Clarke Avenue Beach does not but is critically important from a safety standpoint.

Following yesterday afternoon's meeting, in an effort to make sure that the Town had identified all of the

available Midtown Beach South Ocean Boulevard public parking spaces that would qualify to meet the FLDEP's 25 public parking space requirement for the Clarke Avenue Beach, we performed an audit using a distance measuring wheel using various assumptions as to Clarke Avenue access points that were discussed at yesterday's meeting, e.g. the existing access point at Clarke Avenue, an additional access point at Barton Avenue and a further access point south of the existing access point near Seabreeze Avenue. Our calculations were based on the status quo parking regulations that existed in 2009 before the Town began to make parking regulation changes in order to meet the parking space deficiency versus the FLDEP requirement.

The results of our findings are listed below.

Number Of Public Parking Spaces That Meet FLDEP Requirements

	A	B	C	D	E
Barton – Ocean Block	4	4	13	4	13
Clarke – Ocean Block	0	0	0	0	0
Clarke – Middle Block	6	7	7	7	7
Seabreeze – Ocean Block	0	0	0	0	0
Seaspray – Ocean Block	0	0	0	0	0
South Ocean Boulevard	0	3	3	11	11
Total	10	14	23	22	31

Column A represents the Town's calculations taken in 2009. As you can see, a total of only 10 parking spaces were identified by the Town in 2009 as meeting the FLDEP requirements using only the existing Clarke Avenue access point. That is why the Town felt it necessary to find an additional 15 spaces within the ¼ mile distance parameter in order to meet the FLDEP requirement of 25 spaces.

Column B represents our findings as of yesterday afternoon, again using only the existing Clarke Avenue access point. Based on our measurements, there is one more space for a total of 7 spaces that fall within the ¼ mile distance parameter on the Middle Block of Clarke Avenue and there are also 3 spaces on the east side of South Ocean Boulevard down at the Midtown Beach which also fall within the ¼ mile parameter. Therefore, in 2009 there were really 14 spaces which met the FLDEP requirement not 10.

Additionally, there appears to be some opportunity to add parking spaces on South Ocean Boulevard in Midtown within the ¼ mile required distance of Clarke Avenue Beach. For example, it may be possible to add as many as 3 parking spaces on the west side of South Ocean Boulevard in front of the Sun Trust building by moving the yellow line somewhat in an easterly direction. If that were accomplished, the number of existing parking spaces meeting the FLDEP requirements would be increased to 17.

Column C includes the impact of adding a Barton Avenue access point to Clarke Avenue Beach. This results in all 13 of the Barton Avenue Ocean Block public parking spaces being counted as they all now would fall within the ¼ mile distance requirement.

Column D includes the impact of adding an access point north of Seabreeze Avenue (but not at

Barton Avenue). As can be seen, the impact is to add an additional 8 spaces on South Ocean Boulevard down near the Midtown Beach which now would fall within the ¼ mile distance parameter for a total of 22 spaces all together. This doesn't include the 3 possible spaces on South Ocean Boulevard in front of the Sun Trust building. Also, it was noted that public parking spaces on the east side of South Ocean Boulevard by the Midtown Beach were 24' in length whereas on the west side of South Ocean Boulevard they were 20' in length. If the eastern side parking spaces were reduced to 20' in length this would add 2 more spaces within ¼ mile of the access points to Clarke Avenue Beach.

Column E includes the existing Clarke Avenue Beach access point plus both the Barton Avenue and north of Seabreeze additional access points and results in a total of 31 spaces (not including the possible 3 spaces in front of the Sun Trust building and the additional 2 spaces from reducing the length of the eastern South Ocean Boulevard spaces).

Our conclusion from all of the above is as follows. It would have been possible in 2009 and it is still possible to have maintained the parking regulations status quo on the Ocean Blocks of Seaspray, Seabreeze, Clarke and Barton Avenues by simply adding an access point to the Clarke Avenue Beach either at Barton Avenue or north of Seabreeze (assuming that several parking spaces could be added at Midtown in front of the Sun Trust building) or otherwise or by adding access points at both locations with no need to find several additional parking spaces within the ¼ mile parameter in Midtown Palm Beach. Had this been done rather than allocating all 15 spaces to the Ocean Block of Clarke Avenue which never in its history has permitted any form of weekend parking, the Ocean Block of Clarke Avenue would have retained its residential atmosphere on weekends, the significant safety issues that exist particularly on weekends would have been obviated and the Ocean Block residents would have not experienced, as we discussed yesterday, the approximate 10-20% decrease in property values that realtors are estimating due to the changed parking regulations.

It is our hope that the above analysis provides a framework for the Town to come up with an equitable solution, particularly in the spirit of preservation of residential atmosphere and preservation of property values.

Best regards,

Burke

P.S I apologize that I don't have the e-mail address for all attendees at yesterday's meeting. Would you kindly pass along this note? Thank you.

TOWN OF PALM BEACH
FEB 0 4 2011
Town Manager's Office

E. Burke Ross, Jr.
burke@eburkerossjr.com
561.833.0242 - home
561.308.8733 – cell

February 4, 2011

Mr. Peter Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Ocean Block Clarke Avenue Public Parking and Related Issues

Dear Mr. Elwell,

I have resided on Clarke Avenue since 1989. My house is located on the southwest corner of South Ocean Boulevard and Clarke Avenue directly across from the access point to the Clarke Avenue Beach. I believe that the length of time that I have lived on Clarke Avenue as well as the location of my house give me a particularly informed perspective relative to both the current problems facing Clarke Avenue residents as well relative to several unfortunate changes that have occurred over the last several years.

To begin with, I would like to clarify an apparent misunderstanding held by some individuals. That is, that although public parking on weekdays has been permitted on the Ocean Block of Clarke Avenue for many years, until 2009 there was never any parking of any sort permitted on the Ocean Block of Clarke Avenue on weekends and holidays – public parking was prohibited on weekends and *holidays, permit* only parking was prohibited on weekends and holidays and any other form of parking was also prohibited on weekends.

Since I moved to Clarke Avenue in 1989 there has existed a hodgepodge of parking regulations amongst the various streets that comprise this part of midtown Palm Beach. For example, the "Sea" streets have had permit only parking for many years but permit only parking was allowed on weekends and holidays as well as weekdays. In contrast as noted above, the Ocean Block of Clarke Avenue had public parking on weekdays but absolutely no parking on weekends.

I honestly don't know the origination of why public parking was only permitted on the Ocean Block of Clarke Avenue on weekdays and that absolutely no parking was permitted on weekends and holidays until 2009. My educated guess is as follows. What is now commonly referred to as "Clarke Avenue Beach" is actually called on the land map "Clarke Public Park". This property which runs on the Ocean

side of South Ocean Boulevard from Barton to roughly Seabreeze was donated by the Clarke family in 1917 to the Town of Palm Beach with one major exception. That exception is a small parcel of land which encompasses what is now used as the public access point to the Beach. This portion of land was never sold to the Town of Palm Beach. I believe in 1958 a descendant of the Clarkes conveyed this land to AT&T, somehow in connection with an easement related to the laying of an underground cable underneath Clarke Avenue which runs under the Clarke Avenue Beach out into the Ocean and down to Mexico and South America. My deduction from this history is that when the Clarke Avenue Beach property was donated to the Town of Palm Beach in 1917 it was never intended that there be a public access point to the beach at the intersection of Clarke Avenue and South Ocean Boulevard but that this access point was reserved specifically for the residents of Clarke Avenue and that the general public could access Clarke Public Park by walking down the beach from midtown.

Since the mid-1990's when Palm Beach entered into its first Beach Re-Nourishment Program, partial funding for the Program has been provided by the State of Florida through the Florida Department of Environmental Protection (FLDEP). Apparently one of the requirements of the FLDEP is that the Town of Palm Beach maintain a certain number of public parking spaces within a ¼ mile walk of the beach access point for the various public beaches located in Palm Beach. In the case of the Clarke Avenue Beach, the current funding agreement with the FLDEP requires a total of 25 public parking spaces located within a ¼ mile walk of the access point to the Clarke Avenue Beach. Further requirement was that all 25 public parking spaces would have to be available to the public during all hours that the Clarke Avenue Beach was open to the public (e.g. 9:00 a.m. to 6:00 p.m.). Therefore since the Beach is open both on weekdays and on weekends and holidays the 25 public parking spaces would also have to be available to the public both on weekdays and on weekends and holidays.

At some point in 2009 a representative of the FLDEP came to Palm Beach and toured the various streets located within ¼ mile of the Clarke Avenue Beach and found only 10 public parking spaces which met this requirement. These included 4 spaces on the Ocean Block of Barton Avenue and 6 spaces on the middle block of Clarke Avenue. None of the public parking spaces on the Ocean Block of Clarke Avenue qualified to be counted towards the 25 space requirement because of the longstanding parking regulations which had prohibited all types of parking during weekends and holidays.

Once this situation was uncovered by the FLDEP, the Town of Palm Beach had to move rapidly to meet this 25 public parking space requirement or else it would risk not only losing future funding but could be subject to having to refund previous grants from the FLDEP.

I believe that the initial Town Staff solution to the need to add 15 additional public parking spaces within ¼ mile of the access point to the Clarke Avenue Beach with parking permitted on weekdays and on weekends and holidays was to divide this burden equally on the Ocean Blocks of Clarke, Seabreeze and Seaspray Avenues, e.g. 5 public parking spaces of this type on each of these three blocks. Then, when certain residents of the Ocean Block of Seaspray argued that not all of their block was within the ¼ mile walking limit, their allocation was reduced to 3 and subsequently the Seabreeze allocation for some reason was reduced to 4 and each of their reductions were reallocated to the Ocean Block of Clarke Avenue whose allocation was therefore increased to 8. I and the other residents of the Ocean Block of Clarke Avenue don't recall receiving any notice from the Town of Palm Beach as to this whole process and it sounds like the residents of two blocks were successful in "moving the problem" to another block. Keep in mind that the requirement for 25 public parking spaces within ¼ mile of the Clarke Avenue Beach was agreed to by the Town of Palm Beach for the benefit of all of its taxpayers so as to defray the cost of the various Beach Re-Nourishment Programs and was not entered into for the specific benefit of

the residents of the Clarke Avenue Ocean Block or any other block. Quite the opposite, whichever blocks were asked to pick up a portion of the additional 15 public parking spaces would be providing a service to the rest of the Town's taxpayers.

Following the installation in 2009 of the 15 weekday, weekend and holiday public parking spaces on the Ocean Blocks of Clarke, Seabreeze and Seaspray Avenues, certain residents of the "Sea" streets began to experience the negative side effects of public parking, particularly occurring on weekends and holidays, such as trash, nudity, profane language, trespassing, destruction of private property, etc. All of these negative side effects were also experienced in spades by the residents of the Ocean Block of Clarke Avenue particularly since this block had been allocated more public parking spaces of this sort than the Seabreeze and Seaspray blocks combined. The problem on weekends was exacerbated by the Town's decision to raise parking fees from $2.00 to $5.00 per hour at the midtown Beach which drove beachgoers down to Clarke, Seabreeze and Seaspray Avenues where parking was free. At some point also the Town for the first time ever placed a sign at the access point to Clarke Avenue Beach pronouncing it a "Public Access" point. Due to the addition of weekend and holiday public parking spaces and these other changes this part of midtown Palm Beach's residential character was severely impaired during weekends and holidays.

Ultimately the complaints of the residents of the "Sea" streets resulted in the Town communicating in July 2010 to the residents of the Ocean Block of Clarke Avenue that the entire matter of the allocation of the 15 public parking spaces would be revisited. Meetings were scheduled for July and August 2010 but unfortunately many of the residents, including myself, live elsewhere in the summer months and were unable to attend. Several of us, including myself, wrote a letter and sent a personal representative, in my case my assistant, Miriam Denham, who attended the July meeting. What the Ocean Block Clarke Avenue residents at that time were lead to believe was that this matter would be taken up in the Fall when everyone was back in Palm Beach. Instead, a decision was made to "temporarily" remove the 3 public parking spaces from Seabreeze, remove the 4 public parking from Seaspray and to move these 7 public parking spaces to the Ocean Block of Clarke Avenue thereby at least temporarily resulting in the Ocean Block of Clarke Avenue being allocated 100% of the 15 public parking spaces required to satisfy the obligation to the FLDEP (and with all of Clarke Avenue providing 21 out of the total 25 public parking spaces required for 96% of the total).

You can naturally understand why the residents of the Ocean Block of Clarke Avenue are unanimously very upset about this entire process. Clarke Avenue for many, many years has been regarded as the premiere street in midtown Palm Beach with the highest property values and tax base. The Ocean Block of Clarke Avenue is a part of a residential district and was never intended by the Town fathers to be one massive parking lot for weekend and holiday beachgoers. As stated before, a very convincing argument can be made that in donating Clarke Public Park to the Town in 1917 there was never any intention that the public be permitted to access the beach from Clarke Avenue.

I believe I speak for all residents of the Ocean Block of Clarke Avenue in asking the Town to do two things. First, we would like the Town to work with the residents of this part of midtown to come up with a comprehensive plan to return us to the days when this part of midtown had more of a residential feel. This would probably include changing all parking on all streets in this part of midtown to permit only parking and moving public parking someplace else such as along South Ocean Boulevard between Barton and Seabreeze or possibly even down to the old First National Bank of Palm Beach parking lot. Consideration should also be given to changing some streets to one-way traffic. Parking enforcement staffing, particularly on weekends and holidays, should be increased.

In the case that the above plan does not totally eliminate the 25 required public parking spaces within ¼ mile of the public access point to Clarke Avenue Beach, our second request is that these parking spaces be allocated on some fair and reasonable basis and shared accordingly by the streets located in this area.

When I moved to Clarke Avenue in 1989, as previously mentioned there was public parking on weekdays. On a typical day most of the cars parked on our block were service vehicles serving the residents of our block with a scattering of beachgoers but not too many. The Clarke Avenue Beach was in some respects a hidden jewel and the ocean block on weekends was pristine with absolutely no parking.

Fast forward to the present and on weekends and holidays the Ocean Block of Clarke Avenue looks like something out of Coney Island. The block is teeming with beachgoers (particularly since the Town increased the hourly parking fee at the midtown beach to $5.00 per hour). If the residents of Seaspray were so put off by having 3 public parking spaces and the residents of Seabreeze by having 4 parking spaces, you can imagine what we face during weekends and holidays with 15 public parking spaces. Essentially the Town of Palm Beach has piled the problems of Seaspray and Seabreeze onto the residents of the Ocean Block of Clarke Avenue.

In closing, what I and I believe every resident of Clarke Avenue would like is to roll up our sleeves with the Town of Palm Beach and with the other residents of this part of midtown and to come up with a solution that returns us to the residential district we used to be and to the extent that it doesn't, then causes each street and each block within the ¼ mile requirement to share fairly and ratably in providing the necessary public parking spaces.

Very truly yours,

E. Burke Ross, Jr.

EBR:mld

cc: Thomas G. Bradford, Deputy Town Manager
H. Paul Brazil, P.E., Director of Public Works
Robert Weber, Coastal Coordinator
Gail Coniglio, Mayor
David A. Rosow, Town Council
Michael Puccillo, Town Council
William J. Diamond, Town Council
Richard M. Kleid, Town Council
Robert N. Wildrick, Town Council
Maura Ziska, Esquire
Peter Broberg, Esquire
Clarke Avenue Residents:
Misbah Ahdab
Casey and Geri Cowell
Robert and Lydia Forbes
John and Jinxie Gooch

Mary Harrison
John Kirlin
David Koch
Roger and Melanie Lawson
Jerry and Emily Jane Lemole
Stephen Schwarzman
James and Lidwina Scoroposki
Didi Shields
Patricia Swindle
Jack and Debbie Thomas
Shakir and Laura Wissa
Peter Wood

TOWN OF PALM BEACH
FEB 0 9 2011
Town Manager's Office

Mrs. Francis A. Shields
149 Clarke Avenue
Palm Beach, FL 33480

February 7, 2011

Mr. Peter Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 3348

Re: Clarke Avenue Parking Issue

Dear Mr. Elwell,

I'm writing you today to raise my voice concerning the dramatic and unwelcome changes that I'm experiencing, on a daily basis, due to the changes in the parking restrictions on the ocean block of Clarke Avenue. When we bought our home in 1986, there was no parking allowed on this block on weekends or holidays, as attested by the existing signage up and down the street at that time and up until the year 2009. The majority of vehicles parking during the weekdays were services for the homeowners along with a few local beachgoers. The weekends left the block totally free of vehicles and quiet for the families living here.

With the newly installed signage announcing "Beach Access" and the over-saturation of parking signs on the block during the past two years, this has all changed. We, the homeowners on this block, are now having to endure overwhelming traffic, blaring car radios, discarded garbage on our property, trespassing, vandalism, and swimmers stripping down to change clothing while car doors are left open to the road to afford privacy thereby creating traffic problems and potentially dangerous situations. These are the same issues that the Sea blocks complained of when they had 3 and 4 public parking places.....we now have 34 during the week and 15 on weekends and holidays ! The meter increase from $2 to $5 per hour at Midtown Beach resulted in driving the traffic to the neighboring residential blocks, and word spread quickly about Clarke Avenue. We no longer live on a residential street, and there are times when I don't feel comfortable walking my dog down my block.

In the Palm Beach Real Estate market of today the beach block of Clarke Avenue no longer commands the same rating as in the past. This is a fact that can be attested to by any of the local real estate companies. Were I to drive down this block now looking for a home, I would consider it's present state a negative and would move on to look elsewhere. We, the present 17 homeowners, have lost, and are continuing to lose, value in our homes as a direct result of the parking regulation changes.....and this is over and above any loss we are all experiencing due to the present state of the economy.

The letter of February 4th written by Burke Ross provides a well researched historical backround of Clarke Avenue Beach and the subsequent parking regulation changes. The residents of the ocean block of Clarke are united in our effort to have this problem solved and would appreciate the

opportunity to present our ideas and work with the town and all midtown residents concerned to settle on an equitable solution.

Sincerely yours,

Diana L. Shields

cc: Gail Coniglio,Mayor
David A. Rosow, Town Council
Michael Puccillo, Town Council
William J. Diamond, Town Council
Richard M. Kleid, Town Council
Robert N. Wildrick, Town Council

TOWN OF PALM BEACH
FEB 0 9 2011
Town Manager's Office

MRS. E. A. SWINDLE
137 CLARKE AVENUE
PALM BEACH, FLORIDA 33480
561-659-2393

February 8, 2011

Mr. Peter Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

RE: Ocean Block Clarke Avenue Public Parking and Related Issues

Dear Mr. Elwell,

I have resided at 137 Clarke Avenue since 1977 when Clarke Avenue was the most beautiful and quiet street in midtown Palm Beach. There was no week-end or holiday public parking and limited amount of parking spaces during the week. Now that we have been forced to give the Town 25 public parking spaces seven days a week, this street has turned into a major public thoroughfare. There are cars speeding up and down Clarke Avenue. It is difficult to get out of the driveway. With parking on both sides there is only room for one car to pass through. Parking on Saturday, Sunday and holidays was supposed to be a temporary ruling until everyone returned from the summer. I am very disappointed that they have made such an issue over this without letting the Clarke Avenue residents have a say.

I don't believe that Clarke Beach was intended to be a public beach since there is no life guard. I believe it was intended for the residents on Clarke Avenue. The people that are using Clarke Avenue Beach are also bringing their dogs to the beach. They walk around in bathing suits and Bikinis on the street and when they return from the beach, they change their clothes, sometimes covered only by a towel. This certainly is not conducive to the lifestyle of Palm Beach.

The Town needs to come up with spaces somewhere else as we should not have to be punished for all the traffic and parking on Clarke Avenue. We all should take our fair share. Since AT&T has access for lines in the Ocean, access to the beach needs to be centered between Clarke and Barton Avenue.

The houses on Clarke Avenue are very valuable and our taxes are high. If something is not done to correct this parking/traffic problem, I feel our property value will go down as no one would find this street desirable.

In closing, I concur with Mr. Burke Ross's letter to Mr. Elwell dated February 4, 2011. I do hope that a solution to this problem can be resolved and we can return to the way Palm Beach streets were meant to be, quiet and beautiful.

Sincerely,

Patricia Swindle

Mrs. E. A. (Patricia) Swindle

Cc: David A. Rosow, Town Council
Michael Puccillo, Town Council
William J. Diamond, Town Council
Richard M. Kleid, Town Council
Robert N. Wildrick, Town Council
Gail Coniglio, Mayor
E. Burke Ross, Jr., Clarke Avenue resident

TOWN OF PALM BEACH
FEB 1 0 2011
Town Manager's Office

Rolando Aguiar
150 South Ocean Boulevard
Palm Beach, Florida 33480

February 8, 2011

Mr. Peter Elwell
Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Clarke Avenue Parking

Dear Mr. Elwell,

My name is Rolando Aguiar. I have been David Koch's estate manager for the past six years. My family and I have lived as full time residents at 150 South Ocean Boulevard for the past 2½ years.

Mr. Koch asked me to advise you of the frustrations I have personally experienced while living at his estate. During this time I have dealt with issues regarding the people who use public parking on Clarke Avenue. There is no single day without me or a member of our staff having to pick up garbage, ranging from underwear, various trash items, liquor containers and once even a hypodermic syringe. There have been times when they have vandalized Mr. Koch's property by scratching the walls, damaging landscape plants, etc. They will ring our doorbell and then run away. We have had to deal with obscenities. Sometimes when I walk with the dogs in our property visitors on our street yell over the fence trying to antagonize our dogs getting them to bark. In addition I have experienced verbal confrontations with those who park illegally and block access to our entrance. There have been other occasions when I've been trying to drive down Clarke Avenue and the visitors on our street have been changing clothes with their vehicle doors open, refuse to let me pass and I have to wait until they are finished dressing before I can proceed down the street.

The most recent incident occurred on my way back from dropping the Koch family off at the airport. As I was driving back one young man was chasing three other young men with what appeared to be human feces on a paper plate.

When my family and I first moved to Clarke Avenue in 2008 it had more of a quiet residential street feeling with no public parking on weekends. Now that there are so many public parking spots on Clarke it has certainly changed the atmosphere of our street and has been a disruption to our lives.

Thank you for your consideration in making positive changes to the parking situation on the ocean block of Clarke Avenue.

Sincerely,

Rolando Aguiar

cc: David Koch

TOWN OF PALM BEACH
FEB 1 0 2011
Town Manager's Office

February 10, 2011

Dr. and Mrs. Gerald M. Lemole
124 Clarke Avenue Palm Beach Florida

Dear Councilmember,

We appreciate your taking time to read this letter to consider our concerns. Our family has owned residences in Palm Beach for over fifty years. In fact, three of my wife's siblings have homes on the island. We also own a house on Monterey Road, but realizing we needed more space for our growing family, we purchased our present home on Clarke Ave. in 2007. We choose this street not only for the large house but for the ambiance and the reputation that this location had as a premier street in this town. The quality of life was great and there was apparent value to the properties. There was definitely no public parking permitted on Saturdays, Sundays and Holidays which made for quiet weekends and special occasions.

Not so anymore! The new public parking regulations imposed on our street have had a dramatic and negative impact on our quality of life and home value, to say nothing of the danger for pedestrians. The home owners have been subjected to littering, obscenities, nudity, intimidation and vandalism. The same intolerable conditions that moved you to relocate the public parking places from Seabreeze and Seaspray are now occurring on Clarke Ave. - but only worse – since a critical mass is reached, concentrating the transients on one street, it has become for them the place to meet and hang out.

An additional problem is that the contractors for the surrounding "permit only" streets also park their trucks and equipment on Clarke.

We recognize that since 1995 there has been an ongoing Beach Nourishment Project with the State of Florida and the latest activity in 2009 for Midtown beach nourishment required twenty five additional spaces. But that replenishment was for beaches from Clarke to Via Marina. Not only Clarke but all the beaches benefitted from this program. Seaspray, Seabreeze and Seaview all benefitted. Where is their "skin in the game"? Where are the public parking spaces for Dunbar, Wells and Atlantic Avenues that were also required by the State?

In summary, this decision is intolerable and profoundly unfair. Clarke Avenue residents have paid the price for the Midtown Beach Nourishment project and none of the other streets have. Clarke Avenue is the only purely single family, non commercial street in Palm Beach that has had allocated so many public parking spaces, and has had a great change in the weekend and holiday parking pattern. Importantly, the decision to concentrate the parking on our block has

made it a gathering place and destination for transients and has changed the atmosphere on the street.

We urge you to fairly reallocate and relocate the spaces to other streets that have also benefitted from the Beach nourishment program so the onus is more even-handedly distributed.

Thanking you in advance for your considering of this matter, we remain,

Respectfully,

Gerald & Emily Jane Lewis