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

THURSDAY, NOVEMBER 15, 2012

9:30 AM

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

Mayor Gail L. Coniglio
David A. Rosow, President
Robert N. Wildrick, President Pro Tem
William J. Diamond
Richard M. Kleid
Michael J. Pucillo

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. PRESENTATIONS

A. Recognition of John Schuler, Planning and Zoning Commission, From February 2004 Through September 2012

B. Recognition of Michael Spaziani, Planning and Zoning Commission, From September 2009 Through September 2012

C. Recognition of Bobbie Lindsay Buck, Shore Protection Board, From December 2008 Through September 2012

D. Recognition of 2012 Town Employee of the Year

IV. COMMENTS OF MAYOR GAIL L. CONIGLIO

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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

VII. APPROVAL OF AGENDA

VIII. CONSENT AGENDA

A. MINUTES: OCTOBER 9, 2012 — Page 13
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: OCTOBER 10, 2012 — Page 25
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON OCTOBER 24, 2012 — Page 41

D. RESOLUTIONS

1. RESOLUTION NO. 137-2012 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 & Associates Inc. in the Amount of $40,500 for Programming, Site Analysis and Schematic Design Services in Conjunction with the Peruvian Avenue 400 Block Streetscape Special Assessment Project; Approving a Task Budget of $44,550 for this Work; and Authorizing the Town Manager to Execute the Proposal on Behalf of the Town to Effectuate Said Services. [Thomas G. Bradford, Deputy Town Manager] — Page 54

2. RESOLUTION NO. 143-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase of Three (3) Vehicles in the Total Amount of $55,845 as Previously Considered and Approved by the Town Council During the FY2013 Budget Process and Included in the Town's Equipment Replacement Program.
[Kirk W. Blouin, Director of Public Safety] — Page 69

3. RESOLUTION NO. 144-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Increase to Johnson Controls, Inc. Contract in the Amount of $52,649 (Exhibit A); Establishing a Contract Contingency Fund of $70,000 and Thereby Approving a Total Amount of $122,649 from the Town's Equipment Replacement Contingency Fund, if Necessary, to Cover Scope of Work Changes; and Authorizing the Town Manager to Take Actions Necessary to Complete the Townwide Security and Surveillance Project Within Said Contingency. Page 79
[Kirk W. Blouin, Director of Public Safety]

4. RESOLUTION NO. 145-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Twelve Month Extension of the Contract Between the Town of Palm Beach and National Recovery Agency for EMS Billing Account Collections and Authorizing the Town Manager to Execute the Same on Behalf of the Town. Page 99
[Kirk W. Blouin, Director of Public Safety]

5. RESOLUTION NO. 146-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Waiving the Purchasing Manual Policy to Allow Material Purchases in Excess of $25,000 by Quotes in Lieu of Sealed Bids and Establishing an Overall Project Budget of $200,000 to Replace a Section of Sewage Force Main on 23rd Street East of Tamarind Avenue in West Palm Beach, Florida. Page 110
[H. Paul Brazil, Director of Public Works]

6. RESOLUTION NO. 147-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Mock Roos & Associates, Inc. in the Amount of $11,760, and Establishing a Study Phase Budget of $13,000 for the E-3, Garden Road to Tangier Avenue Force Main Study. [H. Paul Brazil, Director of Public Works] Page 115

7. RESOLUTION NO. 148-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract with AECOM in the Amount of $4,995, to Provide Bidding Phase Services for Pump Stations A-42 and A-43 Improvements, Establishing a Bidding Phase Budget of $5,500. Page 124
[H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 149-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract for Bidding Phase Services to Mathews Page 127

Consulting, Inc. in the Amount of $3,505 for Pump Stations A-39 and A-41 Improvements, Establishing a Bidding Phase Budget of $4,000. [H. Paul Brazil, Director of Public Works]

9. RESOLUTION NO. 150-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Palm Peterbilt, Inc., for the Purchase of One Peterbilt 320 Cab and Chassis with 20 CY Rear Load Packer Body, on FSA Contract No. 12-10-0905 in the Amount of $185,538 and Establishing an Overall Budget of $186,238. [H. Paul Brazil, Director of Public Works] Page 131

E. OTHER

1. Authorization to Proceed with Everglades Island Notice of Intent to Use Special Non-Ad Valorem Assessments. [Thomas G. Bradford, Deputy Town Manager] Page 135

2. Approval of Selection Committee for Financial Advisor Services. [Jane Struder, Director of Finance] Page 138

3. Approval of Selection Committee for Contractors to Perform General Utility Projects and Emergency Infrastructure Repairs. [H. Paul Brazil, Director of Public Works] Page 140

4. Approval of Alternative Selection Committee for Telemetry Replacement. [H. Paul Brazil, Director of Public Works] Page 142

5. Authorization to Consider Ordinance No. 16-2012 Prior to 5:00 p.m. on December 12, 2012. [John Page, Director of Planning, Zoning, and Building] Page 144

IX. COMMITTEE REPORTS

A. Administrative & Personnel Committee Meeting of October 2, 2012. [Richard M. Kleid, Chair] Page 146

B. Administrative & Personnel Committee Meeting of November 5, 2012. [Richard M. Kleid, Chair] Page 150

C. Royal Poinciana Way Committee's Interim Report. [Michael J. Pucillo, Town Council Member]

X. BOARD/COMMISSION ANNUAL REPORT

A. Planning and Zoning Commission Annual Report. Page 154
[C. Tanner Rose, Chair, and John Page, Director of Planning, Zoning, and Building]

XI. REGULAR AGENDA

A. Old Business

1. Update Regarding Flagler Memorial Bridge Project.

2. Enforcement of the 1979 Agreement Regarding the Royal Poinciana Plaza Playhouse. Page 158
[William J. Diamond, Town Council Member]
TIME CERTAIN: 10 AM

3. Review of Electrical Service Issues at 160 Royal Palm Way (Palm House). [Ethel Isaacs Williams, Florida Power & Light]
TIME CERTAIN: 1:30 PM

B. New Business

1. Consideration of Scheduling an Attorney/Client Session Regarding Town of Palm Beach vs. Mortgage Electronic Registration Systems, Inc., a Delaware Corporation, Acting Solely as Nominee for Countrywide Bank, N.A.; Bank of America, N.A., f/k/a Countrywide Bank, FSB; and Bac Home Loans Servicing, L.P. f/k/a Countrywide Home Loan Servicing, L.P., in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida Case No. 502011CA014981XXXXMBAF. Discussion of this Matter to Begin **Immediately Following the Special Town Council Meeting on Friday, November 16, 2012**, in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. Attorney/Client Session Attendees: Mayor Gail L. Coniglio; Town Council Members David A. Rosow, Robert N. Wildrick, William J. Diamond, Richard M. Kleid, Michael J. Pucillo; Town Manager Peter B. Elwell; Attorney John C. Randolph; and Court Reporter from Ley & Marsaa Court Reporters, Inc.
[John C. Randolph, Town Attorney]

2. Consideration of Scheduling an Attorney/Client Session Regarding Jason Vega, Artemis Saridakis, Levente Henter, Marcus Farmer, Samuel Riley, and Gilad Bockman vs Town of Palm Beach, Scott Duquette, Kirk Blouin and Daniel Szarszewski, Case Number 50 2012 CA 019746 XXXX MB AI, Fifteenth Judicial Circuit, Palm

Beach County, Florida, to Begin **Immediately Following the Special Town Council Meeting on Friday, November 16, 2012**, in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. Attorney/Client Session Attendees: Mayor Gail L. Coniglio; Town Council Members David A. Rosow, Robert N. Wildrick, William J. Diamond, Richard M. Kleid, Michael J. Pucillo; Town Manager Peter B. Elwell; Attorney John C. Randolph; Attorney Margaret Cooper; and Court Reporter from Ley & Marsaa Court Reporters, Inc.
[John C. Randolph, Town Attorney]

3. Coastal Protection Matters
TIME CERTAIN: 2 PM

a. Post Hurricane Sandy Status Report. Page 221
[H. Paul Brazil, Director of Public Works]

b. Request for a Construction Hours Waiver for USACE's Lake Worth Inlet Maintenance Dredging Project. Page 226
[H. Paul Brazil, Director of Public Works]

c. Transfer of FY12 Surplus to Coastal Protection Fund. Page 230
[Jane Struder, Director of Finance]

4. Florida Inland Navigation District (F.I.N.D.) Grant for Dredging Project in Lake Worth. [H. Paul Brazil, Director of Public Works]

a. RESOLUTION NO. 152-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a State Grant Agreement with the Florida Inland Navigation District for the Town of Palm Beach for Phase I of the Town of Palm Beach Waterway Project in the Lake Worth Lagoon and Authorizing the Town Manager to Execute the Same on Behalf of the Town. Page 233

b. RESOLUTION NO. 153-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract with Applied Technology & Management, Inc. in the Amount of $79,312, to Provide Field Investigations, Preliminary Design, and Permitting Services, (Phase I), for the Town of Palm Beach Waterway Project in the Lake Worth Lagoon, and Establishing a Total Task Budget of $84,000. Page 273

5. Update on Par 3 Clubhouse and Funding. Page 277
[H. Paul Brazil, Director of Public Works, and Jay Boodheshwar, Director of Recreation and Special Projects]

6. Update Regarding Projects at the Town Docks. Page 280
[Jay Boodheshwar, Director of Recreation and Special Projects, and H. Paul Brazil, Director of Public Works]

7. Annual Report of Delinquent Accounts. Page 283
[Jane Struder, Director of Finance]

XII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 17-2012 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 130, Vehicles for Hire, Certificate of Public Convenience and Necessity and Permit, Division 2, Section 130-71, Automobile Liability Insurance Requirement, by Amending Automobile Liability Insurance Requirements for Taxicab Certificates of Public Convenience and Necessity; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager] Page 294

B. First Reading

1. ORDINANCE NO. 16-2012 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 134, Zoning, as Follows: Sections 134-787, 134-837, 134-887, 134-942, 134-997, 134-1052, 134-1352 and 134-1393 to Eliminate Municipally Owned and Operated Parks and Recreational Areas as a Permitted Use in the R-AA, R-A, R-B, R-C, R-D(1), R-D(2), Conservation and PUD Zoning Districts; Sections 134-790, 134-840, 134-890, 134-945, 134-1000, 134-1055, 134-1354 and 134-1395 to Create Municipally Owned and Operated Parks and Recreational Areas as a Special Exception Use in the R-AA, R-A, R-B, R-C, R-D(1), R-D(2), Conservation and PUD Zoning Districts; 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] Page 298

2. <u>ORDINANCE NO. 18-2012</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances Relating to Personnel by Rescinding Article III, Resolution of Employee Grievances, in its Entirety; Providing a New Article III for Resolution of Employee Grievances Before the Town's Administrative and Personnel Committee; Providing for the Role of the Committee; Providing for Procedures; Providing for Appeals; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. Page 312
[Peter B. Elwell, Town Manager]

XIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 314 South County Road Per Letter Dated October 26, 2012, from Robert Brixius, President, Brixius Construction Services, Inc. Page 319

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

None

2. New Business

a. **<u>VARIANCE #30-2012</u>** The application of 320 Island Road Trust; relative to property commonly known as **320 Island Road**; described as Lot 1 and Lot 2 and the East 15 feet of Lot 3, ISLAND ROAD DEVELOPMENT ADDITION to the Town of Palm Beach, according to the plat thereof, recorded in Plat Book 18, Page 35 of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting a variance to have a swimming pool 4.25 feet from the mean high waterline in lieu of the 10 foot minimum required. Page 324
[Attorney: Maura A. Ziska]
Request for Deferral to the January 9, 2013, Town Council Meeting.

b. **<u>SPECIAL EXCEPTION #24-2012</u>** The application of Cucina Dell' Arte; relative to property commonly known as **257 Royal Poinciana Way**; described as FLORAL PARK LTS 40 THRU 43 AND FLORAL PARK ADD NO I, PLAT BOOK 5, PAGE 28; located in the C-TS Zoning District. The applicant requests a Special Exception allowing Cucina Dell' Arte to occupy 646 sq. ft. in the rear of the building for storage space in addition to the 2,700 sq. ft. already approved for a total of 3,346 sq. ft. The operation of the restaurant will remain the same. [Attorney: Peter S. Broberg]

D. Other

None

XIV. ANY OTHER MATTERS

XV. 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 "Audio (Live and Archived)." 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.

- 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.

Thu 11/15/2012 09:30 AM	Town Council Meeting-Regular and Development Review Matters	Council Chambers
Fri 11/16/2012 09:00 AM	Retirement Board Meeting	Council Chambers
Fri 11/16/2012 01:00 PM	Special Town Council Meeting - Del Frisco's	Council Chambers
Fri 11/16/2012 02:00 PM	Investment Advisory Committee Meeting	EOC
Thu 11/22/2012 04:00 AM	THANKSGIVING HOLIDAY	TOWN HALL CLOSED
Fri 11/23/2012 04:00 AM	DAY AFTER THANKSGIVING	TOWN HALL CLOSED
Mon 11/26/2012 06:00 PM	Holiday Tree Lighting	Bradley Park
Tue 11/27/2012 05:30 PM	Holiday Tree Lighting	South County Road
Tue 11/27/2012 06:29 PM	Holiday Tree Lighting	Worth Avenue
Wed 11/28/2012 09:00 AM	Architectural Commission Meeting	Council Chambers
Mon 12/03/2012 09:00 AM	Administrative & Personnel Committee Meeting re: William Eaton	Council Chambers
Tue 12/04/2012 09:00 AM	Administrative & Personnel Committee Meeting re: William Eaton	Council Chambers

Thu 12/06/2012 09:00 AM	FDEP Beach Management Agreement (BMA) Stakeholder's Meeting	Council Chambers
Mon 12/10/2012 09:30 AM	Town Council Workshop to Receive Public Comment for Woods Hole Group's Consideration in Performing its Peer Review of the Town's Coastal Protection Program	Council Chambers
Tue 12/11/2012 09:30 AM	Town Council Meeting	Council Chambers
Wed 12/12/2012 09:30 AM	Town Council Meeting-Development Review Matters	Council Chambers

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: OCTOBER 9, 2012

APPROVAL OF THE MINUTES OF THE REGULAR TOWN COUNCIL MEETING

Presenter

Susan A. Owens, Town Clerk

Supporting Documents

- Minutes of the Town Council Meeting Held on October 9, 2012

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, OCTOBER 9, 2012

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Tuesday, October 9, 2012, at 9:33 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Owens gave the invocation. Council President Rosow led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Alan Golboro, Planning and Zoning Commission, From February 2005 Through August 2012.

Mayor Coniglio recognized Alan Golboro for his service on the Planning and Zoning Commission.

B. Recognition of John Schuler, Planning and Zoning Commission, From February 2004 Through September 2012.

By consensus of the Town Council, this item was deferred to the November 15, 2012, Town Council meeting.

C. Update Regarding Consolidation of the Town's Retirement Boards.
[Ray Snow, Chairman, Retirement Board of Trustees]

Retirement Board of Trustees Chairman Snow, 2335 S. Ocean Blvd., provided an update regarding the consolidation of the Town's Retirement Boards.

Discussion ensued regarding the number of contributing employees versus retired employees participating in the retirement plan, and how the Town ranked nationally.

IV. COMMENTS OF MAYOR GAIL L. CONIGLIO

Mayor Coniglio thanked the community for their generosity, particularly for this Saturday's Employee Appreciation Picnic. The community has made generous donations to make this a very special occasion.

She stated that the Par 3 Foundation has again taken up the mantle to fundraise for the Par 3 Clubhouse. Their monumental efforts will make it a world class facility.

Mayor Coniglio introduced Robin Miller, of the Worth Avenue Association, who thanked the Town for its support of the highly successful "Fashion's Night Out", and recognized the Mayor for her support.

Mayor Coniglio stated that Gregg Beletsky, Worth Avenue Association President, would be the community liaison for the beach cleanup in the Town. She stated that a website would be available for anyone who wants to help clean the beaches; and, that the first beach cleanup would begin at the Mediterranean Road entrance on Thursday, October 25, 2012, from 5:00 p.m. to 7:00 p.m.

She also stated that the entire community is grateful to the Police Department, Police Officers, and Sergeants for their decertification efforts. She said that this offers the opportunity to restore their collaborative relationship and encourages the Council to approve the appropriate pay range increases commensurate with last month's decision for general employees.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council President Pro Tem Wildrick stated that he hopes the pay range increases pass today for the Police Officers and Sergeants.

Council President Pro Tem Wildrick spoke regarding Breast Cancer Awareness month, and asked everyone to remind their loved ones to get checkups, wear something pink this month, participate in the various charitable activities, and not let the political season cause us to get sidetracked.

Council President Rosow requested that Town Manager Elwell look into the possibility of reallocating the FY12 surplus and the proceeds received from a recent insurance claim to the Coastal Protection Program. Town Manager Elwell stated that the item will be placed on the November 15, 2012, Town Council meeting agenda.

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Robert Andrew Roddy, 231 Kenlyn Road, spoke in opposition to Code Enforcement's policy on fines.

Bill Metzger, 277 Esplanade Way, spoke regarding the upcoming Fellowship of

Christians and Jews' beach cleanup the day after Thanksgiving and the upcoming movie *Parker*.

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

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.

A. MINUTES: SEPTEMBER 11, 2012
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: SEPTEMBER 11, 2012
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING-FIRST PUBLIC HEARING ON THE FY13 BUDGET

C. MINUTES: SEPTEMBER 19, 2012
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING-SECOND PUBLIC HEARING ON THE FY13 BUDGET

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON SEPTEMBER 25, 2012

E. RESOLUTIONS

1. RESOLUTION NO. 133-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the Updated Comprehensive Emergency Management Plan for the Town of Palm Beach.
[Jay Boodheshwar, Director of Recreation and Special Projects]

2. RESOLUTION NO. 134-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Purchase of Twenty (20) New Golf Cars and One (1) New Utility Vehicle at a Cost of $84,647.80 from Club Car, Inc., for Use at the Par 3 Golf Course; Authorizing the Town Manager to Take Further Actions Necessary to Complete the Purchase.
[[Jay Boodheshwar, Director of Recreation and Special Projects]

3. RESOLUTION NO. 135-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, to Authorize the

Continued Services of Greenberg Traurig, LLP, to Represent the Town for Federal Lobbying Services in FY13 at a Cost Not to Exceed $63,000. [Peter B. Elwell, Town Manager]

4. RESOLUTION NO. 136-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Planning Study for the Town Hall Square Historic District and the Mizner Fountain by Bridges, Marsh & Associates in an Amount Not to Exceed $48,000; Authorizing the Town Manager to Execute the Proposal on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

5. RESOLUTION NO. 141-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract in an Amount Not to Exceed $30,000 to EMS Management & Consultants, Inc., to Provide Emergency Medical Services Third Party Billing Services, Establishing a Budget for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services.
[Kirk W. Blouin, Director of Public Safety]

F. OTHER

1. Approval of State Forfeiture Expenditures for FY2012.
[Kirk W. Blouin, Director of Public Safety]

2. Waiver of Town Code of Ordinance Section 42-199 to Allow for Extra Work Days for the Queens Lane, Nightingale Trail and Garden Road Alley, Paving, Grading, and Drainage Improvements Project. [H. Paul Brazil, Director of Public Works]

3. Authorization of Funding for Temporary Piping to Bypass Lift Station 22.
[H. Paul Brazil, Director of Public Works]

IX. COMMITTEE REPORTS

A. Public Works Committee Meeting of September 12, 2012.
[Michael J. Pucillo, Chair]

Council Member Pucillo provided an overview of the September 12, 2012, Public Works Committee meeting report.

Council Member Kleid stated that the repaving has been completed from Phipps Ocean Park to Southern Boulevard. He expressed thanks on behalf of everybody who lives south of Sloan's Curve.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to accept the Public Works Committee meeting report. On roll call, the motion carried unanimously.

1. Recommendation to Begin 2013 Construction Season Early – Waiver of Town Code of Ordinance Sections 42-198 and 42-199. [H. Paul Brazil, Director of Public Works]

   Director of Public Works Brazil provided an overview of the Public Works Committee's and Staff's recommendations to allow for the construction season to begin early.

Motion was made by Council Member Kleid, and seconded by Council Member Pucillo, to approve Staff's request for a waiver of Town Code of Ordinance Sections 42-198 and 42-199 to allow for an early start for the Town's Capital Improvement Projects. On roll call, the motion carried unanimously.

2. Modification of Intersection at Miraflores Drive and North Lake Way. [H. Paul Brazil, Director of Public Works]

   Director of Public Works Brazil provided an overview of the project.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the modification of the intersection at Miraflores Drive and North Lake Way. On roll call, the motion carried unanimously.

3. Recommendation to Add Replacement of Generators to the Design Scope of Work for Pump Stations A-39, A-41, A-42, and A-43.
   [H. Paul Brazil, Director of Public Works]

   Director of Public Works Brazil provided an overview of the project.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to authorize the addition of replacement of the emergency generators to the design scope of work for Pump Stations A-39, A-41, A-42, and A-43. On roll call, the motion carried unanimously.

4. E-3 Force Main Replacement Scope of Work.
   [H. Paul Brazil, Director of Public Works]

   Director of Public Works Brazil provided an overview of the project.

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve amending the scope of work for the E-3 Force Main Replacement project. On roll call, the motion carried unanimously.

5. Discussion of Proposed Changes to the Roadway Resurfacing Requirements in the Town's Right of Way Manual.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil provided an overview of the proposed changes.

Discussion ensued regarding paving standards, and utility companies' paving costs versus the Town's paving costs.

B. Water Committee Meeting of September 12, 2012.
[David A. Rosow, Chair]

Council President Rosow provided an overview of the September 12, 2012, Water Committee meeting report. He stated that the ordinance would still be reviewed by the South Florida Water Management District (SFWMD), the City of West Palm Beach, and then it would be brought to the Town Council for adoption. He recommended dissolution of the Water Committee after the proposed ordinance has been adopted.

Town Manager Elwell stated that Staff would look into incorporating cisterns and shallow wells into the ordinance.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to accept the Water Committee meeting report. On roll call, the motion carried unanimously.

C. Administrative and Personnel Committee Request for Town Council Authorization of Subpoenas. [Richard M. Kleid, Chair]

Council Member Kleid provided an overview of the Administrative and Personnel Committee's request for Town Council authorization of subpoenas.

Town Attorney Randolph stated that the Town Code authorizes the Council to issue administrative subpoenas. In the event that the person does not respond, the Council has the authority to have subpoenas validated by the court.

Motion was made by Council Member Pucillo, and seconded by Council Member Kleid, to approve that, if and when the Administrative and Personnel Committee, in the matter of the Scott Duquette hearing only, should require subpoenas, then the Town Council will look favorably upon granting them. On roll call, the motion carried unanimously.

X. <u>REGULAR AGENDA</u>

A. Old Business

1. Request for Waiver of Code of Ordinances to Allow Extended Work Hours on the Flagler Memorial Bridge.
[Ryan Hamrick, Project Manager, PCL Civil Contractors, Inc.]

Ryan Hamrick, PCL Civil Contractors, provided an overview of the request.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the request for a Waiver of the Town Code of Ordinances to allow limited use of a pile hammer, as needed during normal work hours, between December 1, 2012, and April 30, 2013, and to authorize Town Manager Elwell to approve, on a case by case basis, Sunday and holiday work, in the event any special needs or circumstances arise. On roll call, the motion was carried unanimously.

2. RESOLUTION NO. 139-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for $211,980 to Ranger Construction, for the Paving and Resurfacing of North Ocean Boulevard, Establishing a Total Budget of $273,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements. [H. Paul Brazil, Director of Public Works]

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve Resolution No. 139-2012. On roll call, the motion carried unanimously.

B. New Business

1. Planning and Zoning Commission Recommendations re: Parking on South County Road.
[John Page, Director of Planning, Zoning, and Building]

Tanner Rose, Planning and Zoning Commission Chairman, 315 S. Lake Drive, provided an overview of the Commission's recommendations.

Discussion ensued regarding the number of current parking spaces compared to previous parking spaces when the businesses were fully rented, comparison of the amount of residential parking permits that existed prior to today, supervision of employees' parking, private enterprises purchasing property for additional parking, and businesses purchasing parking passes for their employees at the Apollo Parking Lot.

Responding to Town Manager Elwell, Council President Rosow stated that Staff should continue to look at on-street and off-street parking alternatives.

Council President Pro Tem Wildrick stated that, after looking into bussing

the Town employees in from West Palm Beach, it was determined that it would be inefficient and a significant cost to the taxpayers.

Staff was directed to consider off-street parking alternatives for the Mid-Town Commercial Area.

2. RESOLUTION NO. 140-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Contract Extension to Christmas Designers Inc., in the Amount of $97,220.35 for the Installation and Storage of the Holiday Trees, Decorations and Lighting, and Establishing a Budget of $102,000. [H. Paul Brazil, Director of Public Works]

Motion was made by Council Member Diamond, and seconded by Council President Pro Tem Wildrick, to approve Resolution No. 140-2012. On roll call, the motion carried unanimously.

3. Beach Management Agreement (BMA) Matters.
[H. Paul Brazil, Director of Public Works]

a. BMA Application Letter.

Motion was made by Council Member Kleid, and seconded by Council Member Diamond, to authorize Town Manager Elwell to submit an application letter to the State of Florida Department of Environmental Protection. On roll call, the motion carried unanimously.

b. BMA Project List.

Town Manager Elwell stated that approval of this list would not preclude the Town from pursuing other Coastal Management projects, nor would it obligate the Town to complete all of the projects on the list.

Madelyn Greenberg, 3360 S. Ocean Blvd., on behalf of Save Our Shoreline (SOS) and Richard Hunegs, expressed concern regarding Reach 7.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the BMA Project List. On roll call, the motion carried unanimously.

4. RESOLUTION NO. 142-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Expenditure of $32,000 to Replace a Portion of the E-6 Force Main Adjacent to the S-2 Pump Station.
[H. Paul Brazil, Director of Public Works]

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve Resolution No. 142-2012. On roll call, the motion carried unanimously.

5. Insurance Matters [Danielle Olson, Director of Human Resources]

a. Health Insurance Update and Proposed Premium Rates for Calendar Year 2013.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the proposed premium rates for Calendar Year 2013. On roll call, the motion carried unanimously.

b. RESOLUTION NO. 138-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract in an Amount not to Exceed $75,000 to Minnesota Life, to Provide Group Life, Accidental Death and Dismemberment, and Supplemental Life Insurance and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services.

Motion was made by Council Member Diamond, and seconded by Council President Pro Tem Wildrick, to approve Resolution No. 138-2012. On roll call, the motion carried unanimously.

6. Proposed Pay Range Increase and Anniversary Date Pay Raises for Police Officers and Sergeants. [Peter B. Elwell, Town Manager]

Town Manager Elwell provided an overview of the proposal.

Motion was made by Council President Pro Tem Wildrick, and seconded by Council Member Diamond, to approve the proposed pay range increases and anniversary date pay raises for Police Officers and Sergeants. On roll call, the motion carried unanimously.

7. Code Enforcement Board Recommendation for Foreclosure-151 Chilean Avenue. [John C. Randolph, Town Attorney]

Responding to Council President Rosow's question regarding the priority of the Town's lien after the payment of taxes, Town Attorney Randolph stated that after the property is sold, the lien would show up in the title search and the title company would contact the Town to find out how and what needs to be done in order to dispose of the liens. As far as priority is concerned, it is just one of a list of other items that might be included on the title search; but, under our Code, we have a provision which states that our lien is equal to a tax lien. As long as that provision stays in effect, and the Supreme Court rules in favor of this in a similar case before them, that would be the case. Absent that, any first mortgage that is on the property

would take precedence over the Town's lien.

Town Attorney Randolph stated that the Code Enforcement Board recommended that the Council consider foreclosure, although he advised that there would be complications.

Council Member Pucillo suggested authorizing Town Attorney Randolph to enter into negotiations with the property owner, to resolve the matter. He stated that he has several ideas for alternatives to foreclosure.

Council consensus was to authorize Town Attorney Randolph, after consultation with Council Member Pucillo, to commence negotiations with the property owner to see if there are any alternatives to curing the code enforcement lien on the property, and bringing it into compliance with the Town Code.

8. Appointment of an Alternate Member to the Planning and Zoning Commission.
[John Page, Director of Planning, Zoning, and Building]

Motion was made by Council Member Kleid, and seconded by Council Member Pucillo, to ratify the appointment of Thomas Greenbaum as an alternate member to the Planning and Zoning Commission. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading – None

B. First Reading

1. ORDINANCE NO. 17-2012 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 130, Vehicles for Hire, Certificate of Public Convenience and Necessity and Permit, Division 2, Section 130-71, Automobile Liability Insurance Requirement, by Amending Automobile Liability Insurance Requirements for Taxicab Certificates of Public Convenience and Necessity; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve Ordinance No. 17-2012, on first reading. On roll call, the motion carried unanimously.

XII. ANY OTHER MATTERS

Director of Public Works Brazil provided an update on the completion schedule of the

Force Main Project. He stated that, after talking with the contractor and looking at the remaining work items, the anticipated completion date is the week of November 5, 2012, if everything goes as planned.

Council President Rosow stated that, at tomorrow's meeting, the Council will complete all non-time certain items before 2:15 p.m.

XIII. ADJOURNMENT

There being no further business, the October 9, 2012, regular Town Council meeting was adjourned at 11:24 a.m.

APPROVED:

_____

David A. Rosow
Town Council President

ATTEST:

_____

Susan A. Owens, MMC
Town Clerk

_____

Date

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent Agenda

Agenda Title

MINUTES: OCTOBER 10, 2012

APPROVAL OF THE MINUTES OF THE REGULAR TOWN COUNCIL MEETING

Presenter

Susan A. Owens, Town Clerk

Supporting Documents

- Minutes of the Town Council Meeting Held on October 10, 2012

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON WEDNESDAY, OCTOBER 10, 2012

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Wednesday, October 10, 2012, at 9:37 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Owens gave the invocation. Council President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR GAIL L. CONIGLIO – None

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council President Rosow stated that the Town Council would hopefully complete all non-time certain items on the Agenda today before 2:15 p.m., in order to devote the remaining time to the two time certain items.

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE – None

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

WITHDRAWN: Item No. VII.A.1., Appeal of ARCOM Decision, 229 Ridgeview Road, was withdrawn.

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

VII. DEVELOPMENT REVIEWS

Town Clerk Owens administered the oath to all those who would be providing testimony.

A. Appeals

1. Appeal of ARCOM Decision, 229 Ridgeview Road Per letter dated August 20, 2012, from Paul Rampell. ***– This item was withdrawn.***

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 125 Worth Avenue Per Letter Dated September 21, 2012, from Maura A. Ziska.

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond and Kleid spoke with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of The Ferretti Group, provided an overview of the applicant's request.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Frank Gentile, 100 Worth Avenue, spoke in opposition of the waiver.

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 125 Worth Avenue, until November 21, 2012, subject to Staff conditions. On roll call, the motion carried unanimously.

2. Request for Waiver of Section 42-199, Hours of Construction Work, at 150 Worth Avenue Per Letter Dated September 7, 2012, from The Goodman Company.

There was no ex-parte communication declared by the Town Council.

Jeff Fisher, Fisher Contracting Corp, and Bob Saffran, Goodman Company, provided an overview of the applicant's request.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 150 Worth Avenue, subject to Staff conditions. On roll call, the motion carried

unanimously.

3. Request for Waiver of Section 42-199, Hours of Construction Work, at 256 Worth Avenue Per Letter Dated October 3, 2012, from Maura A. Ziska.

The following ex-parte communications were declared: Council President Rosow and Council Member Kleid spoke with Attorney Ziska, who advocated the position of her client. Council Member Diamond left a message on Attorney Ziska's voicemail.

Attorney Ziska, on behalf of Burt Handelsman and the Island Company, provided an overview of the applicant's request.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 256 Worth Avenue, subject to Staff conditions. On roll call, the motion carried unanimously.

4. Request for Waiver of Section 42-199, Hours of Construction Work, at 353 Worth Avenue Per Letter Dated September 21, 2012, from Maura A. Ziska.

The following ex-parte communications were declared: Council President Rosow and Council Members Kleid and Diamond spoke with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of Brown Harris Stevens and Ava Van de Water, provided an overview of the applicant's request.

Rob Frankel, Moss Construction, LLC, stated that the noise referenced in the letter of complaint from Mimi Duncan was actually coming from the apartment that is being renovated above them.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 353 Worth Avenue, subject to Staff conditions. On roll call, the motion carried unanimously.

Staff was directed to notify the Worth Avenue Association that the Town Council is not going to look favorably upon time extensions for construction on Worth Avenue;

additionally, there shall be no contractor parking, whatsoever, along Worth Avenue after November 1st.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. MODIFIED SPECIAL EXCEPTION #8-2012 WITH SITE PLAN REVIEW AND VARIANCE The application of Temple Emanu-El of Palm Beach, Inc.; relative to property commonly known as **190 No. County Road; 224, 226, 234 Seminole Avenue;** described as Lengthy legal description on file; located in the C-TS/R-C Zoning District. The applicant (Temple Emanu-El of Palm Beach) recently obtained ownership of 23,200 square feet of garden/vacant land adjacent to the west of the existing synagogue. The Temple is requesting approval to use the adjacent vacant property as an accessory use to the Temple for religious services and other Temple related activities such as blessing of the animals, sukkot and any other uses that are incidental to a house of worship. The proposed garden activity area will have a fence along the rear/south side of the property, an 800 square foot pergola, a pathway around the perimeter of the garden, and a few benches. A house of worship is a special exception use in the R-C Zoning District and expanding the use of the Temple into the garden area requires special exception approval with site plan review. A Special Exception is also requested to allow 308 additional permanent seats to the Temple Sanctuary. The total number of permanent seats existing today is 553. A special exception request is required for expanding the seating in the sanctuary from 245 seats to 553 seats. A variance is requested to provide zero (0) additional onsite parking spaces in lieu of the additional 77 parking spaces that would have been required for the 308 additional seats that were installed.
[Attorney: Maura A. Ziska]
Deferred from the July 15, 2012, and August 15, 2012, Town Council Meetings.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

The following ex-parte communications were declared: Mayor Coniglio, Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with representatives of the Temple Emanu-El, and residents. Council Members Diamond, Kleid, and Pucillo spoke with Attorney Ziska, who advocated the position of her client. Council

Member Diamond added a disclaimer that he is a member of the Temple Emanu-El.

Attorney Ziska, on behalf of Temple Emanu-El of Palm Beach, Inc., provided an overview of the applicant's request.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Leslie Shaw, 318 Seaspray Avenue, Planning and Zoning Commission Member, spoke in opposition of the project.

Robert Sheff, 219 Seminole Avenue, spoke in opposition of the project.

Asher Bar Zev, 150 Seminole Avenue, spoke in favor of the project.

Joann Warshaver, 223 Seminole Avenue, spoke in opposition of the project.

Herbert Hoffman, 235 Seminole Avenue, spoke in opposition of the project.

Terry Alfuth, 237 Oleander Avenue, spoke in opposition of the project.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

Stephanie Lefes, 2778 S. Ocean Blvd., owner of Royal Palm International Real Estate, 125 Worth Avenue, spoke in opposition of the project.

Richard Bernstein, 235 Sanford Avenue, spoke regarding a resolution of the issues, rather than making unnecessary complaints.

Susan Rosenberg, 288 Queens Lane, spoke in favor of the project.

Sophia Burnichon, 231 Seminole Avenue, spoke in opposition of the project.

Leslie Evans, 135 Seminole Avenue, spoke in favor of the project.

Susan Markin, 1450 North Lake Way, spoke in opposition of the

project.

Ronald Schram, 1420 N. Ocean Blvd., member of the Temple, spoke in favor of the project.

Rabbi Michael Resnick, Rabbi of Temple Emanu-El of Palm Beach, 2480 Presidential Way, West Palm Beach, spoke in favor of the project.

Rabbi Moshe Scheiner, 230 Park Avenue, spoke in favor of the project.

Discussion ensued regarding the number of events, parking, landscaping, hours of events, the number of attendees at events, and garden entryways.

With regard to the onsite parking variance:

Motion was made by Council President Pro Tem Wildrick, and seconded by Council Member Pucillo, that the variance related to Modified Special Exception #8-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met, subject to the condition that St. Edwards Church provides written authorization annually for the Temple to utilize St. Edwards' parking facilities for Temple overflow parking. On roll call, the motion carried unanimously.

With regard to the special exception for the additional 308 permanent seats:

Motion was made by Council Member Pucillo, and seconded by Council Member Kleid, that the portion of Modified Special Exception #8-2012 related to the additional 308 permanent seats shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, subject to the condition that St. Edwards Church provides written authorization annually for the Temple to utilize St. Edwards' parking facilities for Temple overflow parking. On roll call, the motion carried unanimously.

Clerk's Note: The below item and subsequent Declaration of Use Agreement item were considered concurrently.

With regard to the special exception and site plan review for the expanded use of the Temple into the garden area:

Motion was made by Council Member Pucillo, and seconded by Council President Pro Tem Wildrick, that the portion of Modified Special Exception #8-2012 related to the expanded use of the Temple shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-

229 of the Town Code have been met, and that the site plan review related to Modified Special Exception #8-2012 shall be approved based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, subject to the Declaration of Use Agreement referenced below.

(1) Declaration of Use Agreement.
[John Page, Director of Planning, Zoning, and Building]
TIME CERTAIN: 2:15 PM

The following modifications were made to the proposed Declaration of Use Agreement:

Page 3, Item 2(d): "All such plant hedging shall, at planting, be a height not less than six (6) feet. The owner shall be given three (3) years to allow said hedging to reach a height not less than eight (8) feet, at which height it ~~and~~ shall be maintained ~~at said height~~."

Page 3, Item 2(e): Delete entire section.

Page 4, Item 2(g): "No Events shall be permitted to begin before 9:00 a.m. or to extend past 10:00 p.m. The 10:00 p.m. deadline shall be applicable to religious services connected with ceremonies conducted within the Synagogue. All other Events, other than the religious Events described herein above, shall be concluded by 8:00 p.m. The maximum number of people allowed at such Event shall be subject to the provisions set forth in Section 2(h) ~~with a maximum 150 people to be allowed at such Event~~."

Page 4, Item 2(h): "Events in the Garden will be held on not more than ~~twenty-six (26)~~ twenty (20) days during any twelve (12) month period. ~~Plus the number of days included in the observance of Sukkot~~. There shall be no more than ~~four (4)~~ three (3) events per month (Sukkot excepted)~~.~~, of which only one (1) can have up to three hundred (300) attendees; all other events held within a given month shall not exceed one hundred fifty (150) attendees."

Page 4, Item 2(k): "Owner shall return to the Town Council to address matters relating to compliance and impacts of the use of the Garden one (1) year from the Effective Date of this Agreement. At said meeting, the Town shall have the authority to modify the terms and conditions of this agreement based upon the testimony presented at such meeting relating to the impact of the use of the garden on the residential neighborhood in which it is located. Reconsideration shall be based upon the criteria set forth in the Town's Code relating to Special Exceptions and Site Plan Reviews. The Temple reserves the right to return to the status quo prior to the execution of the Declaration of Use Agreement. All parties agree to preserve their respective rights."

Page numbers in Article IV, Section 2, shall be renumbered accordingly.

There will be only one entryway. Said entryway shall be located adjacent to the Temple at the northeast corner, shall be not larger than 10', and shall be used for both vehicular and pedestrian traffic. Exhibit "C" will be redrawn accordingly.

On roll call, the motion carried unanimously.

b. SPECIAL EXCEPTION #20-2012 WITH VARIANCE The application of Harvey E. Oyer, III, Attorney for Del Friscos Restaurant Group; relative to property commonly known as **340 Royal Poinciana Way, Suites 300, 300A, 302, 302A, 306 & 308;** described as Lengthy legal description on file; located in the C-PC Zoning District. The applicant requests a Special Exception for a 260 seat, 8,399 square foot restaurant use in the C-PC district to be located in combined tenant spaces on the northeast side of the Royal Poinciana Plaza, as permitted by Section 134-1259 (a)(5). The proposal also includes the elimination of 2,589 square feet of existing second floor office space, the addition of a bar, a wine room, and two private dining rooms. The proposed hours of operation are: lunch and dinner (from 11am to 11pm) Monday through Wednesday, lunch and dinner (from 11am to midnight) Thursday through Saturday, and dinner only (5pm to 11pm) on Sunday. A special exception is requested for changes in use for more than 2,000 square feet in C-PC district, permitted by Section 134-1261, for a Town-Serving restaurant. A variance is also requested to eliminate the requirement to provide 72 off-street parking spaces to accommodate the 260 seat restaurant.
[Attorney: Harvey E. Oyer, III]
Deferred from the August 15, 2012, Town Council Meeting.
TIME CERTAIN: NO EARLIER THAN 3:00 PM

Mayor Coniglio recused herself, left the dais, and provided a Memorandum of Voting Conflict Form 8b to Town Clerk Owens.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with the residents. Council President Rosow and Council Members Diamond, Kleid, and Pucillo spoke with the applicant. Council President Rosow, Council President Pro Tem Wildrick, and Council Members Kleid and Diamond received correspondence from those for and against the project. Council President Pro Tem

Wildrick and Council Member Diamond spoke with representatives from both sides. Council President Rosow spoke with the lessees. Council Member Kleid spoke with a representative from Palm Beach Towers.

Attorney Oyer, Shutts & Bowen LLP, on behalf of Del Friscos Restaurant Group, provided an overview of the applicant's request.

Bill Martens, Vice President of Development, Del Friscos Restaurant Group, provided a presentation of the project.

Attorney Oyer provided additional information regarding the project and addressed the reduction in seating in their request.

Jerry Wentzel, DKS Associates Principle, transportation consultant, provided an overview of their traffic concurrency report relative to the restaurant.

Attorney John Little, Gunster Law Firm, on behalf of Sterling Palm Beach LLC, provided an overview of the 1979 Agreement.

Zoning Administrator Castro provided Staff's comments.

Town Attorney Randolph stated that he and Zoning Administrator Castro met with Attorney Little and discussed the availability of 213 additional parking spaces. He said that more time is needed to study the issue in order to advise the Town Council.

Bill Cooley, 8 Windsor Court, spoke in opposition of the project.

Sue Ellen Clarfeld, 1952 Breakers Pointe Way, owner of Truffies, spoke in opposition of the project.

Joel Kassewitz, 854 S. County Rd., spoke in opposition of the project.

Bill Yahn, Corcoran Group, showed photographs of the parking lot and spoke in favor of the project.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

Brooks Ricca, 267 Dunbar Rd., spoke in opposition of the project.

Peter Broberg, 220 Monterey Rd., spoke in opposition of the project.

Tim Frank, 230 Pershing Way, West Palm Beach, representative of Palm Beach Towers, spoke regarding the discrepancies between available parking spaces and the parking study.

Kristy Pressly, General Counsel for The Breakers, spoke in favor of the project.

John Eubanks, on behalf of Palm Beach Towers, 1209 N. Olive Avenue, spoke in opposition of the project.

Glenn Biers, on behalf of Palm Beach Grill, 340 Royal Poinciana Way, spoke in opposition of the project.

John Grosskopf, Palm Beach Towers General Manager, spoke in opposition of the project.

Jay Dinger, Leverett House Condominium, spoke in opposition of the project.

Adam Munder, Sterling Palm Beach LLC Partner, spoke in favor of the project.

Lori Volk, 206 Phipps Plaza, on behalf of the Volk Foundation, spoke regarding the proposed project.

Susan Markin, 1415 North Lake Way, spoke regarding the zoning issues.

Anita Seltzer, 44 Cocoanut Row, spoke regarding unresolved zoning issues.

Discussion ensued regarding parking, the 1979 Agreement with Royal Poinciana Plaza, town-serving requirements, clientele, and nature of the business.

Motion was made by Council Member Diamond to defer Special Exception #20-2012 with Variance. Motion died for lack of a second.

Motion was made by Council Member Diamond, and seconded by Council Member Pucillo, to defer Special Exception #20-2012 with Variance to the November 16, 2012, Special Town Council meeting, at 1:00 p.m. On roll call, the motion carried unanimously.

c. VARIANCE # 26-2012 The application of 2310 Investors LLC; relative to property commonly known as **2310 South Ocean Blvd.**; described as lengthy legal description on file; located in the R-C Zoning District. The applicant is proposing a dock which a portion

runs adjacent to the seawall the length of the property and is 8 feet deep. The other portion of the proposed dock would be 48 feet long with a platform and boat lift. The variances being requested are as follows: to allow a zero (0) north riparian side yard setback in lieu of the 25 foot minimum required; to allow a zero (0) south riparian side yard setback in lieu of the 25 foot minimum required; to allow the length of the dock to be 48 feet deep and west of the US Pierhead line and the Town's Bulkhead line in lieu of the 6 foot maximum allowed for a marginal dock. [Attorney: Maura A. Ziska]
Deferred from the August 15, 2012, Town Council Meeting.

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with property owner Lawrence Moens. Council President Rosow and Council Member Kleid spoke with Attorney Ziska, who advocated the position of her client. Council Member Kleid spoke with the contractor.

Attorney Ziska, on behalf of 2310 Investors LLC, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Lawrence Moens, 850 S. Ocean Blvd., property owner, provided additional information regarding his application.

Motion was made by Council Member Diamond, and seconded by Council Member Kleid, that Variance #26-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried unanimously.

2. New Business

a. VARIANCE #29-2012 The application of CSC Brazilian LP.; relative to property commonly known as **301 Australian Avenue**; described as lengthy legal description on file; located in the R-C Zoning District. The applicant is requesting a variance to keep 1050 square feet of artificial turf in the center of the north courtyard, which results in a landscaped open space of 23.3% in lieu of the 24.5% existing and the 35% minimum required in the R-C Zoning District. [Attorney: Maura A. Ziska]
[Landmarks Preservation Commission Recommendation: Implementation of the proposed variance will cause negative architectural impact to the subject property. Carried 6-1]

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of CSC Brazilian LP, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

Adam Schlesinger, President of CSC Brazilian LP, spoke regarding the difficulty of maintaining real grass in event areas.

Motion was made by Council Member Pucillo, and seconded by Council Member Kleid, that Variance #29-2012 be denied for the reason that the application does not meet the criteria set forth in Section 134-201(a), items 1 through 7. On roll call, the motion carried 4-1, with Council President Rosow dissenting.

b. SITE PLAN REVIEW #10-2012 WITH VARIANCE The application of NDL Palm Beach Property LLC; relative to property commonly known as **191 Bradley Place**; described as Lot 19, Block 4, OCEAN PARK H.W. ROBBINS ADDITION TO PALM BEACH, FLORIDA, according to the plat thereof, as recorded in Plat Book 6, Page 78, Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant requests a site plan review and variance to raise the building height in the restaurant north dining room from 12.1 feet to 14 feet and the overall height of the building from 12.1 feet to 19.83 feet by replacing the flat roof with a pitched roof. A variance is requested to raise the height and overall height of the building with an existing 1.5 foot rear setback in lieu of the 10 foot minimum required.
[Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the variance will not cause negative architectural impact to the subject property. Carried 6-1.]

The following ex-parte communications were declared: Council President Rosow and Council Members Kleid and Pucillo spoke with Attorney Ziska and Attorney Tim Hanlon, who advocated the position of their clients. Mayor Coniglio and Council Member Diamond spoke with Attorney Hanlon, who advocated the position of his client. Mayor Coniglio spoke with several residents on

Seminole Avenue.

Attorney Ziska, on behalf of NDL Palm Beach Property LLC, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Attorney Ziska read a list of self-imposed restrictions agreed upon by the applicant and Il Lugano.

Robert Sheff, 219 Seminole Avenue, expressed concern regarding parking.

Motion was made by Council Member Pucillo, and seconded by Council Member Diamond, that Site Plan Review #10-2012 be approved based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, and that the variance related to Site Plan Review #10-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met, subject to staff conditions relative to installation of improved ventilation system, fixed doors, and impact glass, and a reliance on the good faith efforts of the parties, as presented. The dumpster screening/enclosure element must go before ARCOM, following Staff review. On roll call, the motion carried unanimously.

D. Other

1. Review of the Proposed Declaration of Use Agreement for the Palm House, 160 Royal Palm Way, Site Plan Review No. 6-2012 with Special Exceptions and Variance.

There was no ex-parte communication declared by the Town Council.

Zoning Administrator Castro provided an overview of the proposed Declaration of Use Agreement.

Attorney Ziska, on behalf of the applicant, provided a list of provisions in the proposed Declaration of Use Agreement that her client was not in agreement with.

Town Clerk Owens administered the oath to those who had not already been sworn in and would be providing testimony.

Tara Lordi, Asset Manager, stated that Florida Power & Light (FPL) has not yet connected their power and it is causing more delays.

Vivian Dorris, 155 Brazilian Avenue, expressed concern regarding the generators that were being used.

Council Member Kleid requested that the Ordinances, Rules, and Standards (ORS) Committee look at requiring that a site have power prior to construction, and to no longer allow generators as temporary power.

Council President Rosow requested that the Town's FPL representative be invited to the next meeting to address the power issues regarding the project.

Discussion ensued regarding enforcement of the Declaration of Use Agreement, the impact of the project on the community, and the previous approvals the applicant had been granted.

Motion was made by Council Member Diamond, and seconded by Council President Pro Tem Wildrick, to approve the proposed Declaration of Use Agreement for the Palm House, 160 Royal Palm Way, related to Site Plan Review #6-2012 with Special Exceptions and Variance, as amended below:

PAGE 4, ITEM 1: "Said water feature shall be operational ~~as determined by the Town Council~~ <u>between the hours of 9:00 a.m. And 12:00 a.m.</u>"

PAGE 4, ITEM 2: ", pool bar" was removed

PAGE 4, ITEM 3: "There shall be no music <u>played</u> on the abutting grass area."

PAGE 4, ITEM 5: "<u>Except for emergencies,</u> the Function Room elevator and stairwells shall not be accessible from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. <u>Access points shall include full doors and physical separations, such that they cannot be breached.</u>"

On roll call, the motion carried unanimously.

2. Request for Reconsideration of Town Council Decision, 95 North County Road (per letter dated July 25, 2012, from Hunter Johnson, Woolems, Inc.).
Deferred from the August 15, 2012, Town Council Meeting.

The following ex-parte communications were declared: Mayor Coniglio, Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with Attorney Hanlon, who advocated the position of his client. Council Member Diamond also spoke with the contractor, John Rogers.

Attorney Hanlon, on behalf of Woolems, Inc., provided an overview of the applicant's request.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Motion was made by Council Member Diamond, seconded by Council Member Pucillo, to approve a reduction of the penalty fee to a total sum of $10,000. On roll call, the motion carried unanimously.

(Clerk's Note: At 12:22 p.m., the Town Council recessed for lunch; at 2:15 p.m., the Town Council reconvened the meeting to consider the Time Certain items.)

VIII. <u>ANY OTHER MATTERS</u> – None

IX. <u>ADJOURNMENT</u>

There being no further business, the October 10, 2012, regular Town Council meeting was adjourned at 7:14 p.m.

APPROVED:

_____
David A. Rosow
Town Council President

ATTEST:

_____
Susan A. Owens, MMC
Town Clerk

_____
Date

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent Agenda

Agenda Title

Approval of Major Matters Considered by the Architectural Commission at its Meeting of October 24, 2012

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated October 30, 2012 from John S. Page, Director of Planning, Zoning and Building
- Minutes of the Architectural Commission Meeting of October 24, 2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

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 October 24, 2012

Date: October 30, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the major items that were approved by ARCOM at the regularly scheduled meeting of October 24, 2012.

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 October 24, 2012.

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, OCTOBER 24, 2012, 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 (8:59:47 a.m.)

Chairman Vila called the meeting to order at 9:00 a.m.

II. ROLL CALL (8:59:52 a.m.)

Robert J. Vila, Chairman	PRESENT
Nikita Zukov, Vice Chairman	EXCUSED
Kenn Karakul, Member	UNEXCUSED
Ann L. Vanneck, Member	PRESENT
Henry Homes III, Member	PRESENT
Richard Sammons, Member	PRESENT
Peter I. C. Knowles II, Member	PRESENT
Martin D. Gruss, Alternate Member	PRESENT
Alexander C. Ives, Alternate Member	PRESENT (arrived at 9:04 a.m.)
Dr. Martin Phillips, Alternate Member	PRESENT

Let the record show that Mr. Gruss and Mr. Ives were voting members today.

Staff members present: John C. Randolph, Town Attorney, (for part of the 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: (9:00:15 a.m.)

IV. APPROVAL OF THE MINUTES FROM THE SEPTEMBER 25, 2012 MEETING: (9:00:33 a.m.)

MOTION BY MR. HOMES FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.

V. APPROVAL OF THE AGENDA : (9:00:47 a.m.)

MOTION BY MR. HOMES FOR APPROVAL OF THE AGENDA.
MOTION SECONDED BY MR. SAMMONS.
MOTION CARRIED UNANIMOUSLY.

VI. ADMINISTRATION OF THE OATH TO PERSONS WHO WISH TO TESTIFY: (9:00:57 a.m.)

Mrs. Delp administered the oath at this time and throughout the meeting as necessary.

VII. OTHER BUSINESS: (9:01:07 a.m.)

None

VIII. PROJECT REVIEW (9:01:12 a.m.)

A. **MAJOR PROJECTS-OLD BUSINESS: (9:01:15 a.m.)**

B - 047 - 2012 Revisions to previous approval
ARCOM TO MAKE RECOMMENDATION RELATIVE TO VARIANCE(S)
Address: 160 Royal Palm Way
Applicant: 160 Royal Palm LLC (Glenn F. Straub, Manager)
Architect: Rafael A. Rodriguez
Project Description: The subject condominium hotel is currently under renovation pursuant to Town Council in May 2007. The site building has been modified from the original plan which requires approval from ARCOM. The following is a list of proposed changes to the approved plan: 1. Elimination of 2 pool structures and relocation of a pool structure 2. Elimination of mansard roof on the east elevation and addition of mansard roof on north elevation and east guest awning elevation 3. Redesign of landscaping, cabanas and pool terrace area 4. Addition of interior floor above lobby to total 1,486 of which 500 square feet is dining area 5. Addition of parapet to connect east and west stair towers 6. Addition of roof deck lounge on existing roof top of hotel 7. Addition of elevators to be shown on roof plans of function room where previously not shown 8. Elevators #2 and #5 up to roof deck 9. Third floor unit #3 exterior wall shown where previously not shown 10. Entrance stair balustrade changed to cast stone 11. Elevator penthouse #7 now shown where previously not shown 12. Front door design has been redesigned 13. Water table and rustication has been removed 14. New cast stone balustrade at function room parapet wall 15. New pergola at south dining terrace 16. New revised west elevation at function room 17. Exterior balconies extended 3?-6" beyond face of building on North, West courtyard and South courtyard elevations. Variances requested for height and overall height, parking spaces, and to allow construction to be phased

Revised Project Description: The subject condominium hotel is currently under renovation pursuant to the approval of the Town Council in May 2007. The site plan has been modified from the original plan which requires approval from the Town Council and ARCOM. The following is a list of the proposed changes to the approved plan: Elimination of two pool structures and relocation of a pool structure which includes service bar. Relocation of pool restrooms to inside of Function Room Elimination of the mansard roof on the east elevation and keep the existing mansard on the east guest wing elevation in lieu of the parapet that was previously shown on the plans and approved. Relocation of pool equipment and storage to under pool service building. Approval of landscaping, cabanas and pool terrace for the entire site. Addition of plunge pools to the pool terrace area. Addition of interior floor above lobby to total 1,486 square feet of which 500 square feet is dining area (#7 not under ARCOM jurisdiction) Addition of parapet to connect east stair tower to existing approved parapet. Addition of elevator to be shown on roof plan of Function Room roof where previously not shown. Replace solid parapet on Function Room with balustrade railing. Increase height of doors in main lobby overlooking pool deck by 3 feet. Add a breezeway from the main lobby to Function Room. Add a 7 foot tall hedge with a 42 inch rail on

south side of proposed swimming pool to run length of pool deck area. Add pergola on south elevation and extend balconies on north, south and east elevations. Addition of service corridors and expansion of kitchen and laundry room which totals approximately 3,625 square feet. (#15 not under ARCOM jurisdiction) Shift location of approved Function Room 25 feet to the east and add back the 4 of the 6 parking spaces that are lost. The size of the spa facility is decreased from 7,325 square feet to 5,948 square feet which eliminates the need for 2 parking spaces that were lost. Net effect is zero loss of parking spaces. Replace solid concrete railing on stairway on south side of west wing fire escape with precast balustrade railing.

At the June meeting, there was a motion to defer and see each one of these individual requests come in with the approved plans, pictures of existing conditions, and requested changes with supporting information. At the July meeting, there were a series of motions for approval and/or deferral to the August meeting. Deferred items include: The front elevation (porte cochere) which is to be re-designed with piers or double columns and then brought back to ARCOM; the Landscape plan is to return to ARCOM after obtaining final site plan approval from the Town Council; and, detailing of the breezeway from the main lobby to the Function Room to return to ARCOM. At the August meeting, there was a motion to approve, as presented, the southern wall exposure boundary line with the addition of doubling up the number of 14 ft. Traveler Palms that are from the Function Room east, adding Confederate Jasmine of a minimum height of 12 ft. to that wall, and that immediately, the eastern hedge perimeter be treated, fertilized, at least once a week, and be allowed to grow to a height of 16-18 feet, and that all these Traveler Palms are under perpetual maintenance, and the whole property should be under perpetual maintenance, and that it is our recommendation that the Medjool Palms be replaced with Coconuts. There was a second motion relative to the front porte cochere to make these four columns square piers, and that the piers are to align with the wall above, and the applicant is to return next month (Sept.) with a drawing of the piers (effectively a deferral). There was a third motion relative to the south stairs on the west wing, to remain with the original design of the exits, i.e., to not replace the cement with aluminum. The applicant was also asked to address the issue of noise from the A/C equipment at the September meeting. At the September meeting, without hearing the project further, the project was deferred to the October meeting at the applicant's request.

Please be advised that the applicant's attorney has requested deferral to the November meeting.

MOTION BY MRS. VANNECK FOR DEFERRAL TO THE NOVEMBER MEETING, BUT THE APPLICANT IS CAUTIONED THAT THIS IS THEIR SECOND AND FINAL DEFERRAL.
MOTION SECONDED BY MR. HOMES.
MOTION CARRIED UNANIMOUSLY.

At Mr. Homes' request, Mr. Page provided a status update with regard to this project. He stated that the project is moving forward, and there is a time deadline of February 14, 2013 to finish the project. Landscaping along the south property line has been completed. The applicant has both ARCOM and Town Council approval to complete the project, but any additional changes would have to return to ARCOM. Those issues will be heard at the November ARCOM meeting.

B - 072 - 2012 Park Garden
Address: 224, 226, 234 Seminole Avenue
Applicant: Temple Emanu El of Palm Beach, Inc.
Architect: Cotleur & Hearing, Inc.
Project Description: Passive park garden that includes a walking path with benches and a pergola

At the August meeting, without hearing the project, there was a motion for deferral to the October meeting.

Call for disclosure of ex parte communication: Disclosures by Mr. Vila and Dr. Phillips

ARCHITECTURAL PRESENTATION BY: Donaldson Hearing, Cotleur & Hearing
ATTORNEY PRESENT FOR THE APPLICANT: Maura Ziska
OTHERS WHO TESTIFIED: Sophia Burnichon, 235 Seminole Avenue; Joanne Warshaver, 223 Seminole Avenue

Prior to any discussion of this matter, Mr. Vila reminded the commission and the audience that ARCOM was only concerned with the aesthetics of the garden, not usage issues.

Mr. Hearing provided a brief history of the genesis of the garden. He explained that several months ago the site was cleaned up, sod was installed, and a much better buffer along the southern boundary was created. The project is to continue the beautification effort, to install a 5 ft. scored concrete walking path, and to construct a solid redwood pergola on the east side of the site, along with additional landscaping and hedging. The north hedge row is proposed to be a doubled solid 6 ft. Podocarpus hedge. The project includes a decorative black anodized gate at the entrance, and low level lighting on the pergola and pathway. Ms. Ziska stated that per the Town Council, the Podocarpus hedge will be grown to a minimum height of 8 feet.

Under comments: Disappointed that there are not more shade trees; and, request for a tree to be placed to disguise the pergola from the street and the neighbors.

Town Attorney Randolph read from the Declaration of Use Agreement for this project reminding the commission that the Town Council placed an emphasis on landscape screening along the north, west and south boundaries. Mr. Hearing pledged that all landscape screening will be maintained in the future. Mr. Randolph also clarified that according to the Declaration of Use Agreement, the hedge is to be planted at a minimum height of 6 feet, and then be allowed to grow to 8 feet, and be maintained at that height.

Sophia Burnichon, 235 Seminole, expressed her concerns relative to the project, i.e., view from her bedroom; number of people who will enter the garden at the proposed location; height of screening. Joanne Warshaver, 223 Seminole Avenue, expressed her concerns relative to the project, i.e., requested a postponement because, in her opinion, neighbors have not been notified about the true nature of the application; stated she has been unable to see the plans; concerned with privacy for neighbors and insufficient screening; problem with entrance location; concern regarding maintenance equipment, and concern regarding 300 people entering the property

Ms. Ziska clarified that the entrance location is already set pursuant to the previous Town Council review of the site plan.

MOTION BY MR. GRUSS FOR APPROVAL AS PRESENTED WITH THE CAVEAT THAT A TREE OF SUFFICIENT HEIGHT BE INSTALLED TO PARTIALLY SCREEN THE PERGOLA.
MR. SAMMONS REQUESTED THAT A RESIZING AND REDESIGN OF THE PERGOLA BE INCLUDED IN THE MOTION. THIS WAS NOT ACCEPTED BY MR. GRUSS.
MOTION FAILED FOR LACK OF A SECOND.

MOTION BY MR. SAMMONS FOR APPROVAL OF THE LANDSCAPE AS PRESENTED, INCLUDING THE REQUEST FOR AN ADDITIONAL TREE (TO SCREEN THE PERGOLA), AND A DEFERRAL OF THE PERGOLA REQUESTING RE-DESIGN AND FURTHER DETAILS.
MOTION SECONDED BY MR. GRUSS.
THERE WAS NO VOTE RELATIVE TO THIS MOTION.

Under discussion, there was an opinion recommending against deferral, and in support of the pergola as designed. Others felt that the presentation was insufficient as to details and bracing of the pergola.

MOTION BY MR. HOMES TO APPROVE THE LANDSCAPE PLAN AND DEFER THE PERGOLA (TO THE NOVEMBER MEETING). [Note: There was no mention of the additional tree to screen the pergola in this motion, but that was the concensus of ARCOM.]
MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.

B - 073 - 2012 Demolition and New Residence
Address: 200 Eden Road
Applicant: Act II Properties, LLC
Architect: SKA Architect + Planner/Patrick W. Segraves, AIA
Project Description: Demolition of existing two-story home. Construction of new two-story British West Indies style home to be approximately 6,600 square feet. Home will consist of four bedrooms, 5.5 baths, living room, family room, dining room, kitchen library, loggia and a three-car garage. Final landscape will also be included. Roof: Patina green flat concrete tile; Building color: Cream; Trim color: White; Shutter color: Dark Green

At the September meeting, there was a motion for approval of the demolition with the typical caveats for sodding and irrigating. There was a second motion to approve the architecture, but to return with the final landscape (effectively a deferral to October), with the comments that were made including a new location for the generator, and revisions to the landscape along North Ocean Boulevard.

Please be advised that the landscape architect has requested deferral to the November meeting.

MOTION BY MR. IVES FOR DEFERRAL TO THE NOVEMBER MEETING.
MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.

B. **MAJOR PROJECTS-NEW BUSINESS:**

B - 076 - 2012 Demolition and New Residence
Address: 140 Australian Avenue
Applicant: Elizabeth Rad and Steven Elghanayan
Architect: SKA Architect + Planner/Patrick W. Segraves, A.I.A.
Project Description: Demolition of existing one-story home. Construction of new two-story Mediterranean-Revival style home to be approximately 4,900 square feet. New home will consist of six bedrooms, six and one half baths, living room, den, study, staff bedroom and bath, loggia and a two-car garage. Final landscape design will also be included. Roof: Terracotta barrel tile; Building Color: White; Trim: Stained cypress/cast stone

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Patrick W. Segraves, SKA Architect +Planner
LANDSCAPE PRESENTATION BY: Don Skowron

Mr. Segraves provided the demolition report for this 1941 Volk designed home. He indicated that the perimeter walls will remain. After viewing the photos of the interior, it was suggested that the demolition contractor attempt to salvage the cypress paneling.

MOTION BY MR. HOMES FOR APPROVAL OF THE DEMOLITION WITH THE TYPICAL CAVEATS FOR SODDING AND IRRIGATING, AND REQUESTING THAT THE MATERIALS BE SALVAGED IF POSSIBLE.
MOTION SECONDED BY MR. IVES.
MOTION CARRIED UNANIMOUSLY.

Mr. Segraves provided the presentation for the new 1&2-story Mediterranean Revival home, with a circular driveway and side-loaded garage, in accordance with the submitted plans and as described above.

Under commission comments: Column spacing off on rear elevation; issue with windows on front elevation in guest room vs. garage; scale of entrance door; issue with size of rafter tails and they do not follow the pitch of the roof.

Mr. Skowron continued with the landscape/hardscape presentation. During demolition, all landscape material will be removed except for the construction buffer. Design elements include: front courtyard, circular driveway, front walkway, 70 ft. x 10 ft. pool, generator and mechanical equipment on west side, and, Green Buttonwood hedge around the entire property.

MOTION BY MR. HOMES FOR APPROVAL AS PRESENTED, WITH THE CHANGE TO THE RAFTER TAILS AND A RE-STUDY OF THE COLUMNS.
MOTION SECONDED BY MR. GRUSS.
MOTION CARRIED 5-2, WITH MRS. VANNECK AND MR. SAMMONS OPPOSED.

B - 082 - 2012 Demolition
Address: 1475 North Lake Way
Applicant: Peter Herne
Architect: Smith and Moore Architects, Inc.
Project Description: Demolition of a one-story residence and pool

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Peter Papadopoulos, Smith and Moore Architects
LANDSCAPE PRESENTATION BY: Don Skowron
OTHERS WHO TESTIFIED: Mrs. McDonald, Debra Lane, representing her daughter and son-in-law

Mr. Papadopoulos provided the demolition report for this 1963-constructed home. Mr. Skowron stated that all landscape material will be removed except for a construction landscape buffer.

Mr. Lindgren read two pieces of correspondence into the record: 10/15/12 letter from James Myers, a neighbor at 1473 North Lake Way, and an e-mail from Mr. Leidy, another neighbor, at 217 Debra Lane. Both neighbors were concerned that the landscape buffer be retained during construction. Noise and privacy were also concerns. Mrs. McDonald expressed the concerns of her family with regarding to the number of trucks which the project will bring to the neighborhood.

MOTION BY MR. HOMES FOR APPROVAL OF THE DEMOLITION WITH THE TYPICAL CAVEATS FOR SODDING AND IRRIGATING.
MOTION SECONDED BY MR. SAMMONS.
MOTION CARRIED UNANIMOUSLY.

B - 083 - 2012 Demolition
Address: 212 Coral Lane
Applicant: Parkwood Trust Company (Tony Beyer)
Architect: Smith and Moore Architects, Inc./Daniel Kahan
Project Description; Demolition of an existing one-story residence and pool

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Daniel Kahan, Smith and Moore Architects

Mr. Kahan provided the demolition report for this 1951 Howard Chilton designed home. He noted that the significant Ficus around the perimeter will remain, while most other plant material will be removed. Three Royal Palms, a Date Palm, and Chinese Fan Palms will be retained as well.

MOTION BY MR. IVES FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. HOMES.
MOTION CARRIED 6-1, WITH MR. SAMMONS OPPOSED.

Let the record show that there was a short recess from 10:25 a.m. to 10:35 a.m.

B - 084 - 2012 Final Landscape/Hardscape
Address: 221 El Vedado Road
Applicant: 221 El Vedado LLC
Architect: John Lang, Lang Design Group
Project Description: Previously approved revision/addition of 2nd story guest room above garage. Plus final landscape, hardscape and landscape lighting per previously approved preliminary landscape.

Please note that there was no call for disclosure of ex parte communication relative to this item.

ARCHITECTURAL PRESENTATION BY: Jay Valade, Mark Findlay Architects
LANDSCAPE PRESENTATION BY: John Lang, Lang Design Group

Mr. Valade presented a revision to the previously approved one-story garage which would add a second story to that garage. The applicant has also adjusted the location of the equipment pad for the generator, moving it closer to the front of the property and toward the garage.

Under comments: Problem with dormers on second floor; it has lost some of the character of the old design; suggest pedimented dormers instead; issue with fountain size; and, kitchen agreement needed.

Mr. Lang noted that the shape of the pool has been changed; green space has been increased; trash pick-up area moved; hedging added; and, plant palette remains the same.

MOTION BY MR. HOMES FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. SAMMONS.
MOTION CARRIED UNANIMOUSLY.

B - 085 -2012 Demolition
Address: 8 Golfview Road
Applicant: Dana Landry and Bill Moody (Contract Purchasers)
Architect: James C. Paine Jr.
Project Description: Demolish existing residence

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: James C. Paine Jr.
OTHERS WHO TESTIFIED: Ted Cooney, 495 North Lake Way, and Daniel Ponton, 9 Golfview Road

Mr. Paine presented the demolition report for this 1922 Mediterranean Revival home designed by Wyeth.

Mr. Vila interrupted Mr. Paine to ask whether the one page mini-set was all that Mr. Paine intended to include in the mini-set for this project. Mr. Paine responded affirmatively, but noted that more information was on-screen for the presentation.

Mr. Paine noted that the Landmarks Preservation Commission had considered this home for landmark designation, but the commission voted 6-1 against landmarking. The property owner

opposed designation at that time. Mr. Paine stated that the plans include maintaining the site walls and a 10 ft. landscape buffer around the property during demolition. The property will be sodded and irrigated.

Under commission comments: Lack of information in the mini-set; mini-sets not submitted by deadline; photos presented by the applicant are not very good; this house is a fine house, charming and restorable; staff asked to watch for construction damage to recently improved Golfview Road; the documentation provided was deliberately not to show off the charms of the house: this house is part of the ensemble of the street; the presentation shows the bad parts of the house; and Golfview is one of the most charming streetscapes in Palm Beach.

MOTION BY MR. HOMES FOR DEFERRAL FOR A BETTER PRESENTATION.
MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED 6-1, WITH MR. GRUSS OPPOSED.

Mr. Lindgren noted that the applicant met the ARCOM submission requirements for the Application and Record files, but included very little of this information in the mini-sets. He also stated that the deferral will prevent the demolition from occurring prior to the December 1 cut off date for demolitions.

Mr. Paine asked the commission to reconsider the deferral, stating that there was no intent to provide one-sided photos of the house. Mr. Homes responded that he does not wish to penalize the contract purchasers, but the presentation and mini-sets were lacking.

Ted Cooney, 495 North Lake Way, and Landmarks Preservation Commission Chairman, affirmed that the property had been considered by the LPC previously with a 6-1 vote against landmarking. The property owners at that time were opposed to the designation and hired Attorney James Brindell and other experts to challenge the designation. Mr. Cooney offered some historical comments relative to Golfview Road, and an attempted historic district on the street. Mr. Cooney encouraged ARCOM to make sure that any new home would be harmonious with the street.

Daniel Ponton, 9 Golfview Road, stressed that the charm of the street is irreplaceable, and asked ARCOM to be very careful about what is eventually approved for the site.

B - 086 - 2012 Demolition
Address: 149 Brazilian Avenue
Applicant: Roger Kent Investments Inc.
Architect: Michael J. Johnson
Project Description: Demolition of single family residence and accessory structures, hardscape, interior landscaping.

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Michael J. Johnson, Architect and Daniel Menard, La Berge and Menard, Design Architects

Mr. Johnson provided the demolition report for this 1920 Mediterranean Revival home by an unknown architect. Mr. Menard reviewed the photos of the existing home. As for landscaping, there is no significant existing landscape material at the site. The perimeter vegetation will be retained during construction.

Mrs. Vanneck asked the applicant to be sure to remove the Schefflera in the rear. The applicant plans to present a new home at ARCOM's December meeting.

MOTION BY MR. HOMES FOR APPROVAL OF DEMOLITION WITH THE TYPICAL CAVEATS FOR SODDING AND IRRIGATING.
MOTION SECONDED BY MR. IVES AND MR. SAMMONS.
MOTION CARRIED UNANIMOUSLY.

C. MINOR PROJECTS - OLD BUSINESS **(11:17:08 a.m.)**
None

D. MINOR PROJECTS - NEW BUSINESS **(11:17:14 a.m.)**
A - 041 -2012 Awning,sign,window
Address: 314 S. County Road
Applicant: 314 Foods, Inc. (Pickles)
Architect: MP Design & Architecture Inc.
Project Description: Proposed new awning, signage and existing window modification

Call for disclosure of ex parte communication: Disclosures by several members

ARCHITECTURAL PRESENTATION BY: Caroline Forrest, MP Design & Architecture

This project makes changes to the former Hamburger Heaven restaurant, which will now become a restaurant named Pickles. The former green awning will be replaced with a white awning with scalloped edge, and the awning will be placed higher on the facade. Existing metal shutters will be replaced with decorative metal panels. Applied mullions/muntins will be added to the existing plate glass windows. Signage will be applied to the facade and on each door.

MOTION BY MR. SAMMONS FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.

A – 043-2012 Awning
Address: 319 Worth Avenue
Applicant: Richard E. Burke
Contractor: American Awning
Project Description: Change color of awning from black to turquoise and white stripe, 12" wide

Call for disclosure of ex parte communication: Disclosure by Mr. Homes

ARCHITECTURAL PRESENTATION BY: Joe Mattei, American Awning

Mr. Mattei presented the proposed awning to recover an existing frame.

MOTION BY MR. HOMES FOR APPROVAL AS PER THE PROJECT DESCRIPTION.
MOTION SECONDED BY MR. SAMMONS.
MOTION CARRIED UNANIMOUSLY.

IX. COMMUNICATIONS FROM CITIZENS (3 MINUTE LIMIT PLEASE) (11:29:31 a.m.)

None

X. COMMENTS OF THE ARCHITECTURAL COMMISSION AND DIRECTOR OF PLANNING, ZONING AND BUILDING DEPARTMENT: (11:29:34 a.m.)

Mr. Page reminded the members that the November meeting will be held on Wednesday, November 28, 2012.

A. Direction regarding ARCOM approval of B-070-2012(440 Royal Palm Way) - New South Property Line Landscape Buffer **(11:29:37 a.m.)**

Mr. Lindgren provided some history relative to this matter. The issue for discussion today was the property owner's request to be relieved of a portion of the previous ARCOM approval which would require that a fence be installed at the south perimeter (out of the easement) immediately beyond the new Fishtail palms. The property owner had requested staff approval, but Mr. Lindgren did not feel that was appropriate.

Attorney Ray Royce and Art Kelly, President of the Brazils HOA, presented evidence as to why the fence is necessary, and encouraged ARCOM to uphold their August 22, 2012 ruling. Robert Moore, on behalf of the Brazils HOA, presented a similar viewpoint.

Mr. Lindgren read received correspondence from the property owners of 440 Royal Palm Way and from Botanica, a landscape company, into the record.

It was the collective opinion of the commission that the fence should be installed, thereby honoring the agreement made at the August 22, 2012 ARCOM meeting.

XI. ADJOURNMENT: (12:07 p.m.)

MOTION BY MRS. VANNECK TO ADJOURN THE MEETING AT 12:07 p.m.
MOTION SECONDED BY MR. IVES.
MOTION CARRIED UNANIMOUSLY.

The next meeting of the Architectural Commission will be held on Wednesday, November 28, 2012 at 9:00 a.m. in the Town Council Chambers, 2nd Floor, Town Hall, 360 South County Road, Palm Beach.

Respectfully submitted,

Robert J. Vila, Chairman
ARCHITECTURAL COMMISSION

cmd

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 137-2012 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 & Associates Inc. in the Amount of $40,500 for Programming, Site Analysis and Schematic Design Services in Conjunction with the Peruvian Avenue 400 Block Streetscape Special Assessment Project; Approving a Task Budget of $44,550 for this Work; and Authorizing the Town Manager to Execute the Proposal on Behalf of the Town to Effectuate Said Services.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated November 1, 2012, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 137-2012
- Bridges, Marsh & Associates Design Fee Proposal

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Approving a Professional Design Consultant Fee Proposal for the Peruvian Avenue 400 Block Streetscape Project with Bridges, Marsh & Associates, Inc. in the Amount of $40,500 for Programming, Site Analysis and Schematic Design Services and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
Resolution No. 137-2012

Date: November 1, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 137-2012 approving a professional design proposal for the Peruvian Avenue 400 Block Streetscape Project with Bridges, Marsh & Associates, Inc. in the Amount of $40,500 for Programming, Site Analysis and Schematic Design Services and authorizing the Town Manager to execute the same on behalf of the Town. A ten percent contingency has been requested, bringing the total amount of recommended funding to $44,550.

GENERAL INFORMATION

At the May 8 Town Council meeting, Council approved proceeding with a non-ad valorem assessment program to provide comprehensive streetscape improvements on the 400 block of Peruvian Avenue. Eighty one percent (81.3%) of the benefitting property owners signed the petition granting their approval of the project and the special assessment process as was used for the Worth Avenue Improvement Project.

The consultant and his selected design team will research, evaluate and survey the existing conditions within the project area to provide preliminary design improvements consistent with Town and benefitting property owner's goals and project requirements. The preliminary budget will be confirmed. The preliminary budget is:

- $1,300,000 - Total Not-to-Exceed Project Funding
- $325,000 - Initial Project Contingency @ 25% of Total Not-to-Exceed Project Funding
- $975,000 - Initial Total Design and Construction Budget (including permitting, bid documents, and project as-built drawings)
- $847,826 - Initial Construction Budget
- $127,174 - Initial Project Architect All-Inclusive Design and Construction Observation Fees @ 15% (including permitting, bid documents, and project as-built drawings and all other professional disciplines necessary to bring the project from design through construction completion)

One or more additional professional design consultant proposals will be forthcoming upon the completion of this phase, after the property owner's Design Coordinating Team approves proceeding. Those proposals will address developed design, working drawings, bid documents and construction observation.

FUNDING/FISCAL IMPACT

There is no direct cost to the Town by virtue of this request since it is intended to be an assessment project. The project is funded in accordance with the Town Council approved internal financing program.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

This proposed resolution has been reviewed and approved by the Town Attorney for legal form and sufficiency.

Attachments

cc: H. Paul Brazil, Director of Public Works
Jane Struder, Director of Finance
Charles Langley, Senior Project Manager
Lynda Cummings, Purchasing Agent

N: TMO/TGB/2012/Agenda Items/ Backup Memo for BMA Design Fees Peru Ave 400 Blk 111512 TCM

RESOLUTION NO. 137-2012

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 & ASSOCIATES INC. IN THE AMOUNT OF $40,500 FOR PROGRAMMING, SITE ANALYSIS AND SCHEMATIC DESIGN SERVICES IN CONJUNCTION WITH THE PERUVIAN AVENUE 400 BLOCK STREETSCAPE SPECIAL ASSESSMENT PROJECT; APPROVING A TASK BUDGET OF $44,550 FOR THIS WORK; AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PROPOSAL ON BEHALF OF THE TOWN TO EFFECTUATE SAID SERVICES.

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

Section 1. The Bridges, Marsh & Associates, Inc. proposal for Programming, Site Analysis and Schematic Design services for the Peruvian Avenue 400 Block Streetscape Special Assessment Project, attached hereto as Exhibit A, in the amount of $40,500, is hereby approved.

Section 2. A task budget of $44,550 for this proposed professional design consultant services work effort is hereby approved to provide for a 10% contingency, if needed.

Section 3. The Town Manager is hereby authorized to execute the proposal on behalf of the Town of Palm Beach for provision of said services with Bridges, Marsh & Associates, Inc.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 15th day of November, 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

EXHIBIT A

BRIDGES, MARSH & ASSOC.

TOWN OF PALM BEACH
NOV 01 2012
Town Manager's Office

31 October 2012

Mr. Thomas G. Bradford
Deputy Town Manager
Town of Palm Beach
PO Box 2029
Palm Beach, FL 33480

RE: ALTERATIONS AND RENOVATIONS TO PERUVIAN AVENUE STREETSCAPE (between South Lake Drive and Cocoanut Row 400 Block) Research / Evaluate, Survey existing conditions of the Avenue, Design Improvements consistent with the Town of Palm Beach and adjacent Property Owner's goals and requirements.

PROFESSIONAL DESIGN CONSULTANT FEE PROPOSAL

The following is an "Hourly Rate, Not to Exceed" fee proposal for Basic Services on the above referenced project:

CONSULTANT SERVICES:

Architect
Landscape Architect
Electrical Engineer
Civil Engineer
Cost Estimating Engineer
Land Surveyors

THE BASIC SERVICES:

ITEM #I: Schematic Design

- Based on current conditions the Architect and their Consultants will prepare Conceptual documentation in sufficient detail to allow the Town of Palm Beach, Property Owners, Condominium Associations and other public or private entities to approve and endorse the viability of proposed improvements.

- The goal of the project is to beautify and enhance the pedestrian experience with upgrading new landscaping, street lighting, improved sidewalk and associated improvement. Improvement in parking and traffic movements will also be improved to comply with Town of Palm Beach Standards

- Services will include:

  - Current "as-built" survey of existing conditions in area affected by improvements

  - Preliminary assessments of existing utilities impacted by the work.

  - Preliminary impacts/solutions to drainage patterns

  - Develop conceptual engineering plan that identifies surface improvement, conceptual street lighting layout, photometrics and utility impacts.

  - Preliminary landscape/hardscape conceptual plans

  - Proposed architectural improvements as required.

  - Order of Magnitude budget of construction costs

  - Attendance of all required meetings with Town Officials, Property Owners, Design Consultants, Town appointed Review Committee or Board and Town Council.

  - BMA and its Consultants will await formal approval of this Phase by the Town and will not proceed to other Phases of the project without written authorization of the Town.

All the above services to be undertaken up to a maximum of **$40,000.00 (Forty Thousand Dollars)**

Basis of Compensation
As per P.S.A.

BASIS OF COMPENSATION

- Architectural Services to be billed pursuant to PSA attached Exhibit "A".
- Subconsultants to be billed per PSA. See attached Exhibit "B".

ADDITIONAL SERVICES:

- Making revisions in drawings, specifications or other documents when such revisions are:
  - inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;
  - required by the enactment or revision of codes, laws or regulations subsequent to the preparation of documents; or
  - due to changes required as a result of the Owner's failure to render decisions in a timely manner.
- Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule.
- Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices.

OWNER'S RESPONSIBILITY:

- The Town shall designate a representative authorized to act on the Town's behalf with respect to the Project. The Town or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- Geotechnical Exploration, including test borings, exfiltration, ground water location with analysis and recommendation.
- Permitting services or fees.
- Traffic Study

REIMBURSABLE EXPENSES:

In accordance with the Professional Services Agreement between the Town of Palm Beach and Bridges and Marsh Associates, Inc.

Allowance **$ 500.00**

Mr. Peter Elwell, P.E.	M. Mark Marsh, AIA , President
Date	11/1/12 Date

Exhibit "A"

Architectural Breakdown

EXHIBIT A

ESTIMATE FOR ARCHITECTURAL SERVICES

PROJECT:	**ALTERATIONS & RENOVATIONS TO PERUVIAN AVENUE STREETSCAPE**					
CLIENT:	Town of Palm Beach			Date:	10/31/2012	
ESTIMATOR:	Mark Marsh					
	DIRECT LABOR (MAN-HOURS)					
DESCRIPTION: Alterations and renovations to Peruvian Avenue streetscape (between South Lake Drive and Cocoanut Row 400 Block) Research/Evaluate, Survey existing conditions of the Avenue, Design Improvements consistent with the Town of Palm Beach and adjacent Property Owner's goals and requirements.	Principal (MM)	PM/ CADD (HT)	Admin/Clerk (TF)			LINE TOTALS
Meetings	10	2				$ 2,430
Research	2	4				$ 630
Design	7	8				$ 2,340
Administrative	7		6			$ 1,260
TOTAL HOURS	26	14	6			
LABOR ($/hour)	$225	$90	$60			
TOTALS	$5,850	$1,260	$360			**$7,470**
AS-BUILTS (allowance)						
REIMBURSABLES (allowance)						$500

Exhibit "B"

Subconsultant Breakdown

ESTIMATE FOR ENGINEERING SERVICES

PROJECT:	Peruvian Ave Concept Desgin								
CLIENT:	Town of Palm Beach								
ESTIMATOR:	KMS					11/06/12			
						0.0810			
DESCRIPTION:		DIRECT LABOR (MAN-HOURS)							
See Scope of Services		P8 Principal (DWS)	P7 Sr. Prof (KMS)	P4 Prof. (FH)	P2 Prof. (SB)	N6 Support (DC)	SUB (DET, SEC)	EXP	LINE TOTAL
Task 1 - Data Coll. / Concept Des.									$0
Assemble and Review Record Drawings			1.0	1.0					$303
Field Review				2.0					$248
FPL Coordinate for lighting / sub coord							2500.0		$2,500
Pavement Cores / Lighting			1.0				850.0		$1,029
Technical Assistance to BMA			4.5	6.0		1.0			$1,634
Coordination w/ Surveyor				2.0					$248
Typical Cross Section		1.0	1.0	4.0	6.0				$1,406
Plan Sheets (2 double plan)		1.0	5.0	14.0	20.0				$4,585
Revisions			4.0	4.0	7.0				$1,824
Concept OPC			2.0	5.0	2.0				$1,153
Contract File			1.0			0.5			$221
Task 2- Meetings									$0
Progress Meetings (4)			8.0						$1,434
Town Council Meeting (1)			3.0						$538
Public Works Meeting (1)			2.0						$359
West Palm Beach Meeting (1)			2.0						$359
TOPB Police/Fire Meeting (1)			2.0						$359
									$0
									$0
	TOTAL HOURS	**2**	**37**	**38**	**35**	**2**	**3350**	**0**	
	LABOR ($/HOUR)	**191.82**	**165.87**	**114.66**	**80.76**	**76.86**	**1.00**	**1.0**	
	ALLOCATION	**31.07**	**490.39**	**352.92**	**228.95**	**9.34**	**0.00**	**0.00**	
	TOTALS	**414.71**	**6,544.65**	**4,710.00**	**3,055.55**	**124.63**	**3,350.00**	**0.00**	**$18,199.55**

EXHIBIT A

ESTIMATE FOR LANDSCAPE ARCHITECT SERVICES

PROJECT:	**ALTERATIONS & RENOVATIONS TO PERUVIAN AVENUE STREETSCAPE**					
CLIENT:	Town of Palm Beach			Date:	10/31/2012	
ESTIMATOR:	Sanchez & Maddux					
	DIRECT LABOR (MAN-HOURS)					
DESCRIPTION: Alterations and renovations to Peruvian Avenue streetscape (between South Lake Drive and Cocoanut Row 400 Block) Research/Evaluate, Survey existing conditions of the Avenue, Design Improvements consistent with the Town of Palm Beach and adjacent Property Owner's goals and requirements.	Principal JAS/PMM	PM/ CADD (BSV)	CAD (RW/AR)	Graphic Art	Clerk	LINE TOTALS
Meetings	6	7	3	0	0.75	$ 2,475
Research	2	5	0	0	0.5	$ 1,160
Design	5	5	12	0	0.75	$ 2,705
Administrative	1	3	0	37	1	$ 3,660
TOTAL HOURS	14	20	15	37	3	
LABOR ($/hour)	$190	$150	$80	$80	$60	
TOTALS	$2,660	$3,000	$1,200	$2,960	$180	**$10,000**
AS-BUILTS (allowance)						
REIMBURSABLES (allowance)						

EXHIBIT A

ESTIMATE FOR MEP DESIGN SERVICES

PROJECT:	**ALTERATIONS & RENOVATIONS TO PERUVIAN AVENUE STREETSCAPE**					
CLIENT:	Town of Palm Beach			Date:	10/31/2012	
ESTIMATOR:	Wojcieszak & Associates, Inc.					
	DIRECT LABOR (MAN-HOURS)					
DESCRIPTION: Alterations and renovations to Peruvian Avenue streetscape (between South Lake Drive and Cocoanut Row 400 Block) Research/Evaluate, Survey existing conditions of the Avenue, Design Improvements consistent with the Town of Palm Beach and adjacent Property Owner's goals and requirements.	Principal (DW)	PM/ CADD (T M)				LINE TOTALS
Meetings	1	1.5				$ 338
Research		2				$ 250
Design		2				$ 250
Administrative	1					$ 150
TOTAL HOURS	2	5.5				
LABOR ($/hour)	$150	$125				
TOTALS	$300	$688				**$ 988**
AS-BUILTS (allowance)						
REIMBURSABLES (allowance)						

EXHIBIT A

ESTIMATE FOR LAND SURVEYOR

PROJECT:	**ALTERATIONS & RENOVATIONS TO PERUVIAN AVENUE STREETSCAPE**					
CLIENT:	Town of Palm Beach			Date:	10/31/2012	
ESTIMATOR:	Avirom & Associates, Inc.					
	DIRECT LABOR (MAN-HOURS)					
DESCRIPTION: Alterations and renovations to Peruvian Avenue streetscape (between South Lake Drive and Cocoanut Row 400 Block) Research/Evaluate, Survey existing conditions of the Avenue, Design Improvements consistent with the Town of Palm Beach and adjacent Property Owner's goals and requirements.	Principal (MA)	PM/ CADD	Field Crew			LINE TOTALS
Set up for field, field coordination, review	4					$ 500
Drafting		13				$ 910
Field Crew			20			$ 2,060
TOTAL HOURS	4	13	20			
LABOR ($/hour)	$125	$70	$103			
TOTALS	$500	$910	$2,060			**$ 3,470**
AS-BUILTS (allowance)						
REIMBURSABLES (allowance)						

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 143-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase of Three (3) Vehicles in the Total Amount of $55,845 as Previously Considered and Approved by the Town Council During the FY2013 Budget Process and Included in the Towns Equipment Replacement Program.

Presenter

Kirk Blouin, Director of Public Safety

Supporting Documents

- Memorandum dated November 5, 2012 by Kirk W. Blouin, Director of Public Safety
- Resolution No. 143-2012
- FSA Bid 12-20-0905
- RFQ No. 21-2013 - Ford Escape

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Director of Public Safety

Re: Purchase of Three (3) Parking Enforcement Vehicles
Resolution No. 143-2012

Date: November 5, 2012

STAFF RECOMMENDATION

Staff recommends the Mayor and Town Council approve the purchase of three (3) 2013 Ford Escapes to be used as parking enforcement vehicles, as previously considered and approved by the Town Council during the FY13 Budget process and as described more explicitly below.

GENERAL INFORMATION

During the FY2013 Budget process, it was proposed that three (3) Ford Escape vehicles be purchased as part of the FY2013 Equipment Replacement program, replacing three (3) GO4 Interceptor III scooters used in the Parking Enforcement Unit that are 5-9 years old and in various stages of disrepair. The unit currently has a fleet of five (5) scooters, two of which are out of service and whose parts are being used to extend the life of the three (3) remaining scooters. The scooters are no longer manufactured and parts are not unavailable for repairs.

The Ford Escape provides the functionality required by Parking Enforcement personnel and is a cost efficient and economical alternative to the scooter, which ranged in price from $21,915 to 26,043 when last purchased in 2008. Additionally, these vehicles can be maintained by Fleet Maintenance staff using standardized parts that are readily available which allows for a more efficient turnover when a vehicle requires maintenance and/or repair.

The vehicles will be purchased through the Florida Sheriffs Association State Bid #12-20-0905 (Exhibit A) and RFQ No. 21-2013 (Exhibit B) in the amount of $18,615 per vehicle, totaling $55,845.

FUNDING/FISCAL IMPACT

Purchases were approved as part of the FY2013 Equipment Replacement Program with a budget of $19,000 per vehicle.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and is approved as recommended.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed this resolution and approved for legal sufficiency.

KWB/lsg
Attachments

RESOLUTION NO. 143-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF THREE (3) VEHICLES IN THE TOTAL AMOUNT OF $55,845 AS PREVIOUSLY CONSIDERED AND APPROVED BY THE TOWN COUNCIL DURING THE FY2013 BUDGET PROCESS AND INCLUDED IN THE TOWN'S EQUIPMENT REPLACEMENT PROGRAM.

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

That the Palm Beach Police Department is hereby authorized and directed to purchase three (3) vehicles via the Florida Sheriff's Association Bid (12-20-0905) in the amount of $55,845.

A copy of the FSA price per vehicle and RFQ 21-2013 are attached hereto as *Exhibits A and B* and are hereby incorporated within this Resolution and made a part hereof.

PASSED AND ADOPTED IN A REGULAR, ADJOURNED SESSION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH THIS 15TH DAY OF NOVEMBER, 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, Town Clerk	Michael J. Pucillo, Town Council Member

FLORIDA SHERIFFS ASSOCIATION, FLORIDA ASSOCIATION OF COUNTIES & FLORIDA FIRE CHIEFS' ASSOCIATION

SMALL SIZE 4-DOOR UTILITY VEHICLES - 4X2 SPECIFICATION #19

2013 Ford Escape (U0F)

The Ford Escape (U0F) purchased through this contract comes with all the standard equipment as specified by the manufacturer for this model and FSA's base vehicle specification(s) requirements which are included and made a part of this contract's vehicle base price as awarded by specification by zone.

ZONE:	★Western	★Northern	★Central	★Southern
BASE PRICE:	$18,247.00	$18,247.00	$18,247.00	$18,247.00

While the Florida Sheriffs Association, Florida Association of Counties and Florida Fire Chiefs' Association have attempted to identify and include those equipment items most often requested by participating agencies for full size vehicles, we realize equipment needs and preferences are going to vary from agency to agency. In an effort to incorporate flexibility into our program, we have created specific add/delete options which allow the purchaser to tailor the vehicle to their particular wants or needs.

The following equipment delete and add options and their related cost are provided here to assist you in approximating the total cost of the type vehicle(s) you wish to order through this program. Simply deduct the cost of any of the following equipment items you wish deleted from the base unit cost and/or add the cost of any equipment items you wish added to the base unit cost to determine the approximate cost of the type vehicle(s) you wish to order.

NOTE: An official listing of all add/delete options and their prices should be obtained from the appropriate dealer in your zone when preparing your order. Additional add/delete options other than those listed here may be available through the dealers, however, those listed here must be honored by the dealers in your zone at the stated prices.

VEHICLE:	Escape (U0F)			
DEALER:	Duval Ford	Duval Ford	Duval Ford	Duval Ford
ZONE:	★Western	★Northern	★Central	★Southern
BASE PRICE:	$18,247.00	$18,247.00	$18,247.00	$18,247.00

Order Code	Delete Options	All Zones
	Cruise control	NA
	Tilt steering wheel	NA
	Power windows	NA
	Power door locks	NA
	On-Star	NA
	Satellite radio	NA

Order Code	Add Options	All Zones

Please refer to Part D - Emergency Vehicle Lighting Specifications for lightbar descriptions and the awarded dealer pricing.

999 [1]	Engine upgrade - specify *2.0L EcoBoost®* [1]	$1,094.00[1]
	CNG model - specify	NA
	CNG conversion (discuss with dealer)	NA
	LPG conversion (discuss with dealer)	NA
	Factory external engine oil cooler	NA
BTX650 [1]	Battery, 650-cca or greater	NA[1]
	Limited slip differential *AdvanceTrac® with RSC® (Roll Stability Control)* [1]	NA[1]
TREM [1]	Tremco anti-theft - foot activated, dealer installed	$196.00[1]
U0G.201A [1]	Manufacturer's model upgrade package (specify pkg. bid) *SE MODEL including 201a packageBody-Colored Door Handles Body-Colored Mirrors/Skull Caps Chrome Belt line Molding Compass•Door Handles – Interior – Chrome Dual Chrome Exhaust•Floor mats – 1st & 2nd Row with Cargo Hooks•Fog Lamps Ford SYNC® Voice-Activated Communications and Entertainment System (includes 911 Assist®, VHR) Note: See Major Product Changes page (1) for complete SYNC® description and restrictions Grille – MIC Black with Chrome Bar•Headlamps – AutoLamp •Instrument Cluster –OutsideTemperature Display •Keyless-Entry – SecuriCode (Keypad) •MyFord® with 4" Color Screen •Privacy Glass Seats — DriverSeatBackMapPocket — RearCenterArmrest — Rear-SeatRecline•SIRIUS® Satellite Radio with 6 month prepaid subscription Note: SIRIUS® Satellite Radio with 6 month prepaid subscription •Steering Wheel —Audio Controls— Urethane •Storage – Driver side Map Pockets Wheels — 17"AlloySparkleSilverWheels — P235/55R17Tires Cargo Management System II•Tonneau Cover • Black Side Rails and Two Crossba* [1]	$2,994.00[1]
8B [1]	Seat trim upgrade - specify *Leather, includes SEL model and 300a package: ALL SE EQUIPMENT PLUS: • Audio – 9 Speakers • Center Finish Panel – High Gloss Black • Chrome Grille (Upper Bar & Surround) • Chrome Liftgate Garnish • Console (T op) – High Gloss Black ?? Dual Illuminated Vanity Mirrors ?? DZEATC ?? Global One-Touch Up/Down Windows • Gloss Black Grille ?? Leather-Wrapped Shift Knob • Lighting – Ambient Lighting • Mirror (Interior) – Electrochromic (Auto-dimming) Rear View • Mirrors — HeatedExteriorSide — SignalLamps — PuddleLamps ?? MyFord Touch® ?? Perimeter Alarm • Register Vents – Chrome ?? Seats — 10-WayPowerDriver'sSeatw/Seat& Mirror Memory (2 settings) — HeatedFrontDriver/Passenger — Leather-Trimmed — LumbarSupport • Shift Knob – Chrome Trimmed – Leather-Trimmed ?? Steering Wheel — Color-Keyed — Leather-Wrapped ?? Unique Interior Accents (Door/IP) ?? Universal Garage Door Opener ?? Wheels/Tires — 18" Sparkle Nickel — P235/50R18ASTires Note: Standard Tire on FWD and 4WD • Window Switch Bezels – High Gloss Black* [1]	$5,399.00[1]

VEHICLE:	Escape (U0F)			
DEALER:	Duval Ford	Duval Ford	Duval Ford	Duval Ford
ZONE:	★Western	★Northern	★Central	★Southern
BASE PRICE:	$18,247.00	$18,247.00	$18,247.00	$18,247.00

	AM/FM radio with single CD	Std
586 [1]	Navigation system *MyFord Touch®/SYNC® Services/DEATC with Navigation* [1]	$1,569.00[1]
583 [1]	"Blue Tooth" connectivity *SYNC® with MyFord® – Voice-Activated Communications and Entertainment System with 911 assist® & Vehicle Health Reports Note: SYNC® Services available for a $60 annual subscription* [1]	$294.00[1]
3K [1]	Third key	$240.00[1]
	Remote keyless entry	Std
NSTL [1]	5" round dome lamp between sunvisors *Red and White Dome light* [1]	$126.00[1]
	Rear window defogger	Std
	Rear window washer/wiper with intermittent feature	Std
50c [1]	Heavy duty rubber floor mats *50q rear cargo protector add $89* [1]	$74.00[1]
62s [1]	Cargo area cover *Included in model upgrade package 201a. Includes Black side roof rails* [1]	$394.00[1]
924 [1]	Privacy glass, factory installed *Included in model upgrade* [1]	$274.00[1]
	Side air protection (may affect cage availability)	Std
VV [1]	Vent visors - stick-on style	$130.00[1]
RS [1]	Rainshields - flange style	$126.00[1]
	Running boards	NA
	Fog lamps *Included with model upgrade* [1]	NC[1]
942 [1]	Daytime running lights *Removed per Sep 1st 2012 order guide* [1]	$44.00[1]
	Immobilize daytime running lights	NA
	Tow hooks *Equipment added to the front may affect the performance of the airbag system: (Owners manual page 42)* [1]	NA[1]
N2 [1]	Nitrogen filled tires including spare tire	$196.00[1]
	Full size spare tire and rim	NA
	Outside tire carrier	NA
BUA [1]	Backup alarm (Reverse Aid) $242	$156.00[1]
66P [1]	Backup camera with 3.5' LCD (rear mounted camera to provide wide angle field of vision at rear of vehicle) *Includes park technology package and requires SEL.302a package. Dealer Camera is $695* [1]	$994.00[1]
153 [1]	Front license bracket	NC[1]
	Setina PB100A12 – 12" Aluminum Push Bumper	NA
	Setina PB100A16 – 16" Aluminum Push Bumper	NA
	Setina PB300 Push Bumper	NA

VEHICLE:	Escape (U0F)			
DEALER:	Duval Ford	Duval Ford	Duval Ford	Duval Ford
ZONE:	★Western	★Northern	★Central	★Southern
BASE PRICE:	$18,247.00	$18,247.00	$18,247.00	$18,247.00

	Go Rhino 5000 Series Push Bumpers	NA
	Rear Transport Seat – Laguna System 3P	NA
	Rear Transport Seat – Pro Gard 6000 Series	NA
	Rear Transport Seat with extended seat belt – Patriot PSCV1	NA
	Setina #10 Series Lexan Cage with sliding window, full width lower extension panel, dealer installed	NA
	Setina 8S Lexan cage with 1/2 lexan and 1/2 expanded metal with full lower extension panel, dealer installed	NA
	Pro-Gard P2600 Series Polycarbonate (Lexan) Cage with sliding window, full width lower extension panel, dealer installed	NA
	Patriot VP1-120 Lexan cage with 1/2 lexan and 1/2 metal with full lower extension panel, dealer installed	NA
	Patriot VP1-100 all Lexan cage with full lower extension panel, dealer installed	NA
k9 [1]	K-9 Container. All aluminum In-Vehicle (rear seat area) K-9 Container to protect the public, officer, K-9, and vehicle. Please specify vehicle year, make and model. Call for installation, shipping, and/or delivery prices.	$3,000.00[1]
ERD [1]	Electronic Remote Rear Door Opening system to be used with the K-9 Container. Allows the officer to release the K-9 from the vehicle from a remote position.	$1,296.00[1]
HAS [1]	Heat Alarm System to be used in a K-9 vehicle. Warns officer when dangerously high temperatures are inside the vehicle.	$1,376.00[1]
u0h.302a [1]	Optional equipment - specify *ALL SE EQUIPMENT PLUS: Technology package, and cargo management system III•Audio – 9 Speakers •Center Finish Panel – High Gloss Black •Chrome Grille (Upper Bar & Surround) • Chrome Liftgate Garnish •Console (Top) –HighGloss Black ?? Dual Illuminated Vanity Mirrors ?? DZEATC ?? Global One-Touch Up/Down Windows •Gloss Black Grille ?? Leather-Wrapped Shift Knob • Lighting – Ambient Lighting • Mirror (Interior) – Electrochromic (Auto-dimming) Rear View • Mirrors — Heated Exterior Side — SignalLamps — PuddleLamps ?? MyFord Touch® ?? Perimeter Alarm • Register Vents – Chrome ?? Seats — 10-WayPowerDriver'sSeatw/Seat&MirrorMemory(2 settings) — HeatedFrontDriver/Passenger — Leather-Trimmed — LumbarSupport •Shift Knob – Chrome Trimmed – Leather-Trimmed ?? Steering Wheel — Color-Keyed — Leather-Wrapped ?? Unique Interior Accents (Door/IP) ?? Universal Garage Door Opener ?? Wheels/Tires — 18"Sparkle Nickel — P235/50R18ASTires Note: Standard Tire on FWD and 4WD •Window Switch Bezels – High Gloss Black* [1]	$7,294.00[1]
RPO [1]	Optional equipment - specify *Any Factory option not listed within specification is eligible for the discount amount indicated as a credit per item off the manufacturer's current MSRP schedule included with bid solicitation documents. Consult dealer or fleet.ford.com for itemization.* [1]	$3.00[1]
SAFET [1]	Optional equipment - specify *Roadside Emergency Package: Includes Fire Ext, Triangles, First Aid* [1]	$595.00[1]
Cargo [1]	Optional equipment - specify *Husky Mat for Rear cargo* [1]	$176.00[1]
DR Trunk [1]	Optional equipment - specify *Cargo Organizer for Rear* [1]	$2,696.00[1]
Temp [1]	Temporary tag *Overages will be refunded* [1]	$6.00[1]
Txfr [1]	Transfer existing registration (must provide tag number) *Overages will be refunded* [1]	$90.00[1]

Exhibit B

TOWN OF PALM BEACH
REQUEST FOR QUOTATION
RFQ No. 21-2013

Ford Escape (U0F)

INTENT AND SCOPE

It is the intent to obtain pricing, in accordance with the Florida Sheriff's Association's bid No. 12-20-0905 , which covers and includes all required equipment and freight, necessary for and reasonably incidental for full and complete execution of this purchase.

All terms, conditions and specifications of the Florida Sheriff's Association for Bid No. 12-20-0905 shall apply.

SCHEDULE OF BID ITEMS

The undersigned as bidder does declare that no other persons other than the bidder herein named has any interest in this bid or in the contract to be taken, and that it is made without any connection with any other person or persons making bid for the same article, and is in all respects fair and without collusion or fraud.

The undersigned further declares that he has carefully examined the specifications and is thoroughly familiar with its provisions and with the quality type and grade of materials called for therein.

The undersigned further declares that he proposes to furnish the equipment called for within the specified time for the following price:

1. TERMS	2. F.O.B.	3.SHIPMENT VIA	4. QUOTATION VALID UNTIL
Net 30	DESTINATION		

Item	Description /Specifications	Qty	Unit	Unit Cost	Extended Cost
1	FSA Specification No. 19 2013 Ford Escape (U0F) with all standard equipment as specified by the manufacturer for this model and FSA's base specification requirements, included and made part of the FSA contract as awarded by specification, by zone.	3	EA	$ 18247	$ 54741
2	BUA – Back up Alarm Reverse Aid	3	EA	$ 242	$ 726
3	RS – Rainshields – Flange Style	3	EA	$ 126	$ 378
				TOTAL	$ 55,845

Company Name: Duval Ford Authorized Signature:

REMARKS:

The Proposer certifies that this proposal is submitted in accordance with the specification in its entirety and with full understanding of the conditions governing this RFQ. The undersigned representative submits this proposal and certifies that they are an authorized representative of the Proposer who may legally bind the Proposer.

Firm: Duval Ford

***Signature:** **Name/Title:** Rich Tacker Duval Ford

Address: 1616 Cassat Ave **Zip:** 32210

Federal ID#: 59-2111159

Telephone Number: (904) 3882199 **Fax:** (904) 387 6816

Date: 11/2/12

***Failure to affix signature may result in disqualification of proposal.**

Name of Bidder's Contact Person: Richard Tacker

Address:

Phone Number: Fax Number:

E Mail Address: richard.tacker@duvalford.com

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 144-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Increase to Johnson Controls, Inc. Contract in the Amount of $52,649 (Exhibit A); Establishing a Contract Contingency Fund of $70,000 and Thereby Approving a Total Amount of $122,649 from the Town's Equipment Replacement Contingency Fund, If Necessary, to Cover Scope of Work Changes; and Authorizing the Town Manager to Take Actions Necessary to Complete the Townwide Security and Surveillance Project Within Said Contingency.

Presenter

Kirk Blouin, Director of Public Safety

Supporting Documents

- Memorandum dated November 5, 2012, by Kirk W. Blouin, Director of Public Safety
- Resolution No. 144-2012
- Johnson Controls Exhibit A
- Johnson Controls Change Order #2

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Public Safety Director

Re: Authorize Increase to Johnson Controls, Inc. Contract for Installation and Maintenance of Townwide Security and Surveillance System and Establish a Contingency Fund
Resolution No. 144-2012

Date: November 5, 2012

STAFF RECOMMENDATION

Staff recommends the approval of Resolution No. 144-2012 which would allow for:

- An increase to Johnson Controls, Inc. contract in the amount of $52,649 based on Modifications of Scope of Work By Locations (Exhibit A);
- Establish a contingency fund in the amount of $70,000;
- Authorize the Town Manager to take actions necessary to complete the Townwide Security and Surveillance Project within the established budget and;

Staff recommends the approval of expenditure from the Town's Equipment Replacement Contingency Fund in the amount of $122,649 to fund the remainder of the project as proposed by the Modifications of Scope of Work By Locations (Exhibit A) and to establish the contingency fund in the amount $70,000.

GENERAL INFORMATION

The Town Council approved Resolution 2012-02 allowing the Town of Palm Beach to contract with Johnson Controls, Inc. in the amount of $672,308.51. The contract was signed in August of 2012 and a Notice to Proceed was issued on September 19, 2012. At that time, a project contingency was not established to cover expenses that may arise during the course of the project, and are commonly necessary in order to complete the project as intended; nor was authority given to the Town Manager to take any other "actions as necessary" to complete said project.

The additional expenditure and change order is necessary due to various infrastructure issues and ARCOM requirements that were not included in the original RFQ and, therefore, not included in the bid as awarded.

FUNDING/FISCAL IMPACT

In the FY 2012 budget, $400,000 was allocated for this project from the Equipment Replacement Fund, $150,000 was donated by the Palm Beach Police Foundation, and $122,308.51 was allocated from Palm Beach Police Department State Forfeiture funds.

The Police Department is requesting approval to transfer up to $122,649 from the Town's Equipment Replacement Contingency Fund to cover project scope of work changes described in Exhibit A (Modification of Scope of Work by Location) in the amount of $52,649 and to establish a contingency budget of $70,000 for this project.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and is approved as recommended.

TOWN ATTORNEY REVIEW

The Town Attorney has reviewed this resolution and approved for legal sufficiency.

Attachments
KWB/lsg

RESOLUTION NO. 144-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN INCREASE TO JOHNSON CONTROLS, INC. CONTRACT IN THE AMOUNT OF $52,649 (EXHIBIT A); ESTABLISHING A CONTRACT CONTINGENCY FUND OF $70,000 AND THEREBY APPROVING A TOTAL AMOUNT OF $122,649 FROM THE TOWN'S EQUIPMENT REPLACEMENT CONTINGENCY FUND, IF NECESSARY, TO COVER SCOPE OF WORK CHANGES; AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE THE TOWNWIDE SECURITY AND SURVEILLANCE PROJECT WITHIN SAID CONTINGENCY.

WHEREAS, staff recommends approval of increase of $52,649 to Johnson Controls, Inc. contract; establishing a contingency budget of $70,000 and thereby approving a total amount of $122,649 from the Town's equipment replacement contingency fund, if necessary, to cover scope of work changes; and authorizing the Town Manager to take actions as necessary to complete the Townwide Security and Surveillance Project within said contingency.

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

An increase to Johnson Controls, Inc. contract for the installation and maintenance of the Townwide Security and Surveillance Project is hereby approved in the amount of $52,649; a contingency budget for said project of $70,000 is hereby established; and the Town Manager is hereby authorized to take actions as necessary to complete the Townwide Security and Surveillance Project within said contingency.

PASSED AND ADOPTED IN A REGULAR, ADJOURNED SESSION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH THIS 15TH DAY OF NOVEMBER, 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, Town Clerk	Michael J. Pucillo, Town Council Member

Site	Qty	Part#		Per	Extended	
Flagler Bridge (BASE)						
	1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.*	$3,615.00	$3,615.00	
	1	CON-UPU-4CCTV	(CAMERA / ALPR) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch and programmable LVD. UPU will power any combination of CCTV and ALPR cams up to four cams total. This UPU can also be used to power a dual radio repeater and up to two cameras. NOTE: *SM Radio not included in this kit.*	$2,510.00	$2,510.00	
	1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00	
	4	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount.	$9,990.00	$39,960.00	
	1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00	
	1	Labor/Materials	Electrical Work, Installation of equipment, LPR & PTZ Commissioning,		$12,948.00	
	1	***Pole-30***	***30' Decorative Fiberglass Direct Burial Pole***	***$3,489.00***	***$3,489.00***	
	1	JCI-PM	Project Mangement		$1,250.00	
				Site Total	**$66,234.00**	**$66,234.00**
Flagler Bridge (ADDS)						
	1	**CON-RX-LOS**	**5.8 GHz IP Receiver 20 MBs Line of Sight**	**$985.00**	**$985.00**	
	1	**CON-TX-LOS**	**5.8 GHz IP Transmitter 20 MBs Line of Sight**	**$985.00**	**$985.00**	
	2	**CON-ACC-LENS10**	**10dbi Lens**	**$87.00**	**$174.00**	
	2	**CON-ACC-MNT42**	**Universal Mount Arm 42"**	**$44.00**	**$88.00**	
	1	***Pole-30***	***30' Decorative Fiberglass Direct Burial Pole (REMOVE)***	***-$3,489.00***	***-$3,489.00***	
	1	**Pole TOPB-15**	**15' Pole with Decorative moldings & Base**	**$4,303.00**	**$4,303.00**	
	1	**Labor/Materials**	**Additional Labor/Material for Setting base for new pole**	**$1,783.00**	**$1,783.00**	
	1	**Labor/Materials**	**Additional Labor for ALPR Cameras install on Bridge, additional labor for Wireless Radios, & Bucket Truck**	**$2,446.56**	**$2,846.00**	
			TOTAL ADDS for Flagler Bridge		**$7,675.00**	**$7,675.00**

Royal Park Bridge (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.*	$3,615.00	$3,615.00
1	CON-UPU-4CCTV	(CAMERA / ALPR) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch and programmable LVD. UPU will power any combination of CCTV and ALPR cams up to four cams total. This UPU can also be used to power a dual radio repeater and up to two cameras. NOTE: *SM Radio not included in this kit.*	$2,510.00	$2,510.00
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
4	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$9,990.00	$39,960.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	*Pole-30*	*30' Decorative Fiberglass Direct Burial Pole*	*$3,489.00*	*$3,489.00*
1	*Directional Bore*	*Directional Boring under Roadway*	*$1,745.00*	*$1,745.00*
1	Labor/Materials	Electrical Work, Installation of equipment, LPR & PTZ Commissioning,		$15,680.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$70,711.00** **$70,711.00**

Royal Park Bridge (ADDS)

1	**CON-UPU-4CCTV-R**	**(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.***	**$3,615.00**	**$3,615.00**
1	**CON-TX-NLOS**	**5.8 GHz IP Transmitter 20 MBs Non Line of Sight**	**$980.00**	**$980.00**
1	**CON-ACC-LENS10 (Moved from 3000 Block Site)**	**10dbi Lens**	**$0.00**	**$0.00**
1	**CON-ACC-MNT42**	**Universal Mount Arm 42"**	**$44.00**	**$44.00**

Change Order #1

1	*Pole-30*	*30' Decorative Fiberglass Direct Burial Pole (REMOVE)*	*-$3,489.00*	*-$3,489.00*
1	*Directional Bore*	*Directional Boring under Roadway*	*-$1,745.00*	*-$1,745.00*
1	**Labor/Materials**	**Additional Labor for ALPR Cameras Install on Bridge, additional labor for Wireless Radios, & Bucket Truck use.**	**$5,176.00**	**$5,176.00**
1	**Labor/Materials**	**Landscaping & Concrete work (cut and patch concrete and extend feed & supply and plant hedge)**	**$2,464.00**	**$2,464.00**

TOTAL Site Adds **$7,045.00** **$7,045.00**

Southern Causeway (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.*	$3,615.00	$3,615.00
2	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$4,750.00
2	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$9,990.00	$19,980.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
2	***Pole-15***	***15 Ft. Direct Burial Fiberglass Pole***	***$1,396.00***	***$2,792.00***
1	***Directional Bore***	***Directional Boring under Roadway***	***$1,658.00***	***$1,658.00***
1	***Labor/Materials***	***Labor and misc material***	***$2,148.00***	***$2,148.00***
1	Labor/Materials	Electrical Work, Installation of equipment, LPR & PTZ Commissioning,		$12,985.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$49,265.00** **$49,265.00**

Southern Causeway (ADDS)

Change Order #1

1	**CON-UPU-4CCTV-R (From 3000 Block Site)**	**(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.***	**$0.00**	**$0.00**
1	**CON-UPU-4CCTV-R**	**(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.***	**$3,615.00**	**$3,615.00**
2	***Pole-15***	***15 Ft. Direct Burial Fiberglass Pole***	***-$1,396.00***	***-$2,792.00***
1	***Directional Bore***	***Directional Boring under Roadway***	***-$1,658.00***	***-$1,658.00***
1	***Labor/Materials***	***Labor and misc material***	***-$2,148.00***	***-$2,148.00***
1	**Labor/Materials**	**Additional Labor for ALPR Cameras install on Bridge, additional labor for Wireless Radios, & Bucket Truck use.**	**$3,264.00**	**$3,264.00**
1	**Labor/Materials**	**New transformers on poles, required cable & conduit**	**$591.00**	**$591.00**

TOTAL SITE ADDS **$872.00** **$872.00**

Worth Ave 100/200 (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order.*	$3,615.00	$3,615.00
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
4	CON-CCTV-FIXODR	Fixed Camera (WV-SW355) Kit includes camera, universal pole / wall mount and license	$1,372.00	$5,488.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	Labor/Materials	Electrical Work, Installation of equipment, Camera Commissioning,		$3,850.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$16,665.00** **$16,665.00**

Worth Ave 100/200 (ADDS)

1	**Misc/Mat**	**Frunish and installation of High Voltage CAT5 Cable in underground conduit from North Traffic Pole to South Traffic Pole**		**$1,745.00**
1		**Contingency Allowance in case we need to go back to Power Box & Radio**		**$1,870.00**
1	**Labor/Materials**	**Electrical Work, Installation of equipment on second pole, use of Bucket truck**		**$1,383.00**

TOTAL SITE ADDS **$4,998.00** **$4,998.00**

Worth Ave 200/300 (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
3	CON-CCTV-FIXODR	Fixed Camera (WV-SW355) Kit includes camera, universal pole / wall mount and license	$1,372.00	$4,116.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	**20- DPole**	**20' Decorative Direct Burial Pole**	**$1,745.00**	**$1,745.00**
Change Order #1	***1***	***Directional Bore***	***Directional Boring under Roadway (Moved from 3000 Block)***	***$3,954.00***	***$0.00***
1	Labor/Materials	Electrical Work, Installation of equipment, Camera Commissioning,		$11,631.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$24,819.00** **$24,819.00**

Worth Ave 200/300 (ADDS)

1	**20- DPole**	**20' Decorative Direct Burial Pole**	**-$1,745.00**	**-$1,745.00**
1	**Pole-TOPB-20**	**20' Cast aluminum pole with base and decorative moldings**	**$4,536.00**	**$4,536.00**
1	**Labor/Mat/design**	**labor & design for custom design of camera layout**	**$582.00**	**$582.00**
1	**Labor/Materials**	**Labor & Material ,install landscaping to match area, use of man lift**	**$351.00**	**$351.00**

TOTAL SITE ADDS **$3,724.00** **$3,724.00**

87

2800 South Ocean Ave. (Northbound & Southbound)
(NOW LAKE WORTH BRIDGE)

2	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$7,230.00
2	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$9,990.00	$19,980.00
2	CON-ACC-LENS10	10dbi Lens	$87.00	$174.00
1	Labor/Materials	Electrical Work, (2) 15Ft Fiberglass Poles (Black), Installation of equipment, Directional Bore under roadway, LPR Commissioning,		$25,673.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$54,307.00** **$54,307.00**

2800 South Ocean Ave. (Northbound & Southbound)
(Changes to LAKE WORTH BRIDGE)

	1	**CON-CCTV-ALPR**	**Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.**	**$9,990.00**	**$9,990.00**
Change Order #1	1	**CON-CCTV-ALPR (Moved from 3000 Block South Ocean Site)**	**Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.**	$0.00	$0.00
	1	***Labor/Materials***	***Removal of electrical Portion of work ; (2) 15Ft Fiberglass Poles (Black) (Boring under road, extend power feed 80' from Meter, tie into (FPL meter #401-954-310)***	***-$19,694.00***	***-$19,694.00***
	1	**Labor/Materials**	**Additional Labor for ALPR Cameras install on Bridge, additional labor for Wireless Radios, & Bucket Truck use, extend 120V from traffic signal to nema enclosure, mount Nema enclosure to signal arm, extend 1" conduit from enclosure into poles.**	**$6,092.00**	**$6,092.00**

Site Total **-$3,612.00** **-$3,612.00**

Phipps Ocean Park N&S (BASE) NO CHANGE

2	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$7,230.00
2	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$4,750.00
2	CON-ACC-LENS10	10dbi Lens	$87.00	$174.00
1	Labor/Materials	Electrical Work, (1) 15Ft Fiberglass Pole (Black), Installation of equipment, PTZ Camera Commissioning,		$13,025.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$26,429.00** **$26,429.00**

Royal Palm Way Parking (NO CHANGE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
2	CON-CCTV-FIXODR	Fixed Camera (WV-SW355) Kit includes camera, universal pole / wall mount and license	$1,372.00	$2,744.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	Labor/Materials	Electrical Work, Installation of equipment, Fixed Camera Commissioning,		$2,882.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$10,578.00** **$10,578.00**

Australian Lot (NO CHANGE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00

1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	Labor/Materials	Electrical Work, Installation of equipment, PTZ Commissioning,		$2,987.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$10,314.00** **$10,314.00**

Peruvian Lot (NO CHANGE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	Labor/Materials	Electrical Work, Installation of equipment, PTZ Commissioning,		$2,785.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$10,112.00** **$10,112.00**

Midtown Beach (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
2	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$4,750.00
2	CON-CCTV-FIXODR	Fixed Camera (WV-SW355) Kit includes camera, universal pole / wall mount and license	$1,372.00	$2,744.00
1	CON-CCTV- FIXIND	Fixed Camera (WV-SW155) Kit includes camera, universal ceiling / wall mount and license.	$552.00	$552.00
2	CON-RX-LOS	5.8 GHz IP Receiver 20 MBs Line of Sight	$985.00	$1,970.00
2	CON-ACC-LENS10	10dbi Lens	$87.00	$174.00

1	**Pole-15**	**15 Ft. Direct Burial Fiberglass Pole**	**$1,396.00**	**$1,396.00**	
1	Labor/Materials	Electrical Work, Installation of equipment, Camera Commissioning,		$8,163.00	
1	JCI-PM	Project Mangement		$1,250.00	
			Site Total	**$24,614.00**	**$24,614.00**

Midtown Beach (ADDS)

1	**Pole TOPB-15**	**15' Pole with Decorative moldings & Base**	**$4,303.00**	**$4,303.00**	
1	**Pole-15**	**15 Ft. Direct Burial Fiberglass Pole**	**-$1,396.00**	**-$1,396.00**	
1	**Labor/Materials**	**Boring from new pole location to power source, installation of decorative base, extend 120v circuit from lifeguard bunker to nema**		**$2,996.00**	
			TOTAL SITE ADDS	**$5,903.00**	**$5,903.00**

Flagpole (Base)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00	
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00	
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00	
1	**Pole-15**	**15 Ft. Direct Burial Fiberglass Pole**	**$1,396.00**	**$1,396.00**	
1	Labor/Materials	Electrical Work, 15Ft Fiberglass Pole (Black), Installation of equipment, PTZ Commissioning,		$10,707.00	
1	JCI-PM	Project Mangement		$1,250.00	
			Site Total	**$19,430.00**	**$19,430.00**

Flagpole (ADDS)

2	**CON-CCTV-FIXODR**	**Fixed Camera (WV-SW355) Kit includes camera, universal pole / wall mount and license**	**$1,372.00**	**$2,744.00**	
1	**Labor/Materials**	**Electrical Work, CR DUNN to extend conduit from bunker, Installation of equipment, extend 120V circuit from Lifeguard Bunker to Nema enclosure, Relocate (1) Existing pole, mount and install (1) new Pole & extend lighting control wiring, mount enclosure. Aim, focus &**		**$13,889.00**	
1	**Pole TOPB-**	**Pole with Decorative moldings & Base to match surrounding (Allowance)**	**$4,303.00**	**$4,303.00**	

1	Pole-15	15 Ft. Direct Burial Fiberglass Pole	-$1,396.00	-$1,396.00

TOTAL SITE ADDS **$19,540.00** **$19,540.00**

200 Block Royal Poinciana (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
2	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$4,750.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	**POLE-30BA**	**30' Direct Burial Fiberglass arm and Banner arm**		**$3,250.00**
1	Labor/Materials	Electrical Work, 30Ft Fiberglass Pole (Black), Installation of equipment, directional bore, Camera Commissioning,		$12,288.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$25,240.00** **$25,240.00**

200 Block Royal Poinciana (CHANGES)

1	POLE-30BA	30' Direct Burial Fiberglass Pole with Banner arm	-$3,250.00	-$3,250.00

SITE TOTAL ADDS **-$3,250.00** **-$3,250.00**

3000 Block S. Ocean (BASE)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
1	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$9,990.00	$9,990.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	*Directional Bore*	*Directional Boring under Roadway* ***(Moved to 200/300 Worth Ave)***		$3,954.00
1	Pole-15	15 Ft. Direct Burial Fiberglass Pole	$1,396.00	$1,396.00
1	Labor/Materials	Electrical Work, Installation of mounting of equipment		$9,380.00
1	JCI-PM	Project Mangement		$1,250.00

Change Order #1

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			Site Total	**$29,672.00**	**$29,672.00**

3000 Block S. Ocean Blvd (CHANGES)

Change Order #1	1	CON-UPU-4CCTV-R (Moved to Southern Bridge)	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$0.00	$0.00
Change Order #1	1	CON-CCTV-ALPR (Moved to Lake Worth Bridge)	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$0.00	$0.00
Change Order #1	1	CON-ACC-LENS10 (Moved to Royal Park Bridge)	10dbi Lens	$0.00	$0.00
	1	*Pole-15*	*15 Ft. Direct Burial Fiberglass Pole*	*-$1,396.00*	*-$1,396.00*
	1	*Labor/Materials*	*Extend 120v circuit from source to pole, run 1" conduit from enclosure to pole, installation of equipment*		-$9,380.00
			SITE TOTAL CHANGES	**-$10,776.00**	**-$10,776.00**

South Town Limits (BASE)

	1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
	1	CON-CCTV-ALPR	Genetec ALPR (AU-K-VGA-GENSHAR) Kit includes camera, universal pole mount and license.	$9,990.00	$9,990.00
	1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
	1	Labor/Materials	Electrical Work, Installation of equipment on existing Town owned pole, LPR Commissioning.		$3,734.00
	1	JCI-PM	Project Mangement		$1,250.00
			Site Total	**$18,676.00**	**$18,676.00**

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South Town Limits (ADDS)

1	**Pole TOPB-30**	**30' Pole with Decorative moldings & Base**	**$4,885.00**	**$4,885.00**
1	**Labor/Materials**	**Install meter, disconnectand riser to new meter spot, landscaping around new service, Additional Labor/Material for Setting base for new pole**	**$4,791.00**	**$4,791.00**

TOTAL SITE ADDS **$9,676.00** **$9,676.00**

GulfStream-South Ocean (Base)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
1	CON-CCTV- PTZ	Panasonic PTZ Camera (WV-SC385) Kit includes camera, universal pole / wall mount, enviromental housing and license.	$2,375.00	$2,375.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	**Pole-15**	**15 Ft. Direct Burial Fiberglass Pole**	**$1,396.00**	**$1,396.00**
1	Labor/Materials	Electrical Work, Installation of equipment, Camera Commissioning,		$14,730.00
1	JCI-PM	Project Mangement		$1,250.00

Site Total **$23,453.00** **$23,453.00**

GulfStream-South Ocean (ADDS)

1	**Labor/Materials**	**Install new service at transformer location, landscape around meter, mount enclosure in shrubs, extend 120v circuits from new service to enclosure, install 1" conduits from enclosure to pole**		**$2,630.00**
1	**Directional Bore**	**Directional Bore under and along roadway from to new light pole on corner**		**$4,205.00**
1	***Pole-15***	***15 Ft. Direct Burial Fiberglass Pole***	***-$1,396.00***	***-$1,396.00***

TOTAL SITE ADDS **$5,439.00** **$5,439.00**

2295 South Ocean (BASE)

1	CON-UPU-LMW4AP	(PTP 800 LICENSED MICROWAVE, and / or up to 4 ea. 58430 ACCESS POINTS) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, POE injectors, industrial Ethernet switch, programmable LVD, -48VDC DC-DC converter	$3,930.00	$3,930.00
2	CON-RX-NLOS	5.8 GHz IP Receiver 40 MBs Non Line of Sight	$4,920.00	$9,840.00

1	CON-SC-MINI	Site Controller Mini (GPS time syncs 2 AP radios)	$843.00	$843.00
1	CON-PTP-800	23 GHz Licensed Microwave Link (Town Hall to 2295 SOB)	$27,400.00	$27,400.00
1	Labor/Materials	Electrical Work, Installation of equipment, Equipment Commissioning,		$3,292.00
1	JCI-PM	Project Mangement		$730.00

Site Total **$46,035.00** **$46,035.00**

Barclay Wealth (Base)

1	CON-UPU-4CCTV-R	(CAMERA / ALPR + SM RADIO) 120 VAC input /24 VDC 10 amp output, includes battery back up min run time 4 hours fully loaded, data & power surge suppression, fan cooled NEMA enclosure, DC circuit breaker panel, industrial Ethernet switch, programmable LVD and Subscriber Module Radio w/ Lens. UPU will power any combination of CCTV and ALPR cams up to (4) cameras total. NOTE: *Please specify radio type at time of order*	$3,615.00	$3,615.00
1	CON-RX-LOS	5.8 GHz IP Receiver 20 MBs Line of Sight	$985.00	$985.00
1	CON-TX-NLOS	5.8 GHz IP Transmitter 20 MBs Non Line of Sight	$964.00	$964.00
1	CON-ACC-LENS10	10dbi Lens	$87.00	$87.00
1	Labor/Materials	Electrical Work, Installation of equipment, Device Commissioning,		$2,566.00
1	JCI-PM	Project Mangement		$360.00

Site Total **$8,577.00** **$8,577.00**

Head End (Town Hall)

3	CON-RX-NLOS	5.8 GHz IP Receiver 40 MBs Non Line of Sight	$4,950.00	$14,850.00
1	CON-SC-NLOS	Site Controller CMM 14 Port POS Hardend Switch	$4,250.00	$4,250.00
1	CL1008MUKIT	8-Port KVM Switch w/ 17" LCD Monitor	$1,339.00	$1,339.00
2	ES0519-0126	1 RMS 19" X 26" ADJUSTABLE HEAVY DUTY FIXED SHELF	$57.50	$115.00
1	FS728TP	SWITCH STAND ALONE PROSAFE 24-PORT 10/100 SMART	$395.00	$395.00
2	MX-46-FX-ST	10/100 Ethernet Module TCVR, 2 Fiber, ST Connector	$377.98	$756.00
10	GSC-1MobilU	Security Center Mobile User Connection (Software Key)	$275.00	$2,750.00
1	GSC-Av-S	GSC AutoVu Standard Base Package	$2,050.00	$2,050.00
12	GSC-Av-S-1SHP	One (1) Sharp camera connection (LPR Camera License)	$510.00	$6,120.00
1	GSC-Base-5.1	Genetec Security Center (GSC) Base Package V5.1	$15.00	$15.00
1	GSC-Om-S	GSC Omnicast Standard Package	$660.00	$660.00
1	GSC-VIRT	Support for Virtualization. Only available w/ Enterprise Packeges	$1,390.00	$1,390.00
48	GSC-Om-S-1C	1-Camera License	$165.00	$7,920.00

1	VMS-Serv-Sror-24	VMS SuperMicro Server, 233GHz,QC 2GB RAM, 4GE, Win 2003 SP R2 24 TB Raid Cloudbank-24, 24 TB Server/Storage Appliance. Pivot3 RAIGE Director	$32,733.00	$32,733.00	
1	GEN-ENG	Genetec Field Engineers (Onsite Commissioning)	$12,970.00	$12,970.00	
1	Labor/Materials	Installation of equipment, LPR System Commissioning, Loading System Software and mounting hardware into Rack, testing & Programming etc.	$13,720.41	$13,294.51	
1	JCI-PM	Project Mangement	$3,552.00	$3,552.00	
			Site Total	**$105,159.51**	**$105,159.51**

Town Hall & PD Analog to IP Converters

3	0414-004	M7010 VIDEO ENCODER 16CH H.264, 15FPS	$2,125.00	$6,375.00	
1	CON-WS-MS	Workstation for VMS at PD	$4,367.00	$4,367.00	
4	CP1200AVR	8-Outlet / 1200VA / 720Watt / UPS with AVR	$198.00	$792.00	
1	VZ-32RTC	32" LCD 1366x768, 16:9 (BNC, HDMI, DVI, VGA	$1,275.00	$1,275.00	
1	Labor/Materials	Installation of equipment, Programming & Commissioning of cameras into system		$1,209.00	
1	JCI-PM	Project Mangement		$600.00	
		Site Total		$14,618.00	**$14,618.00**

Software Maintenance

1	SMA-BASE-1Y	SMA Base Package – 1 year	$500.00	$500.00	
76	SMA-CAM-S-1Y	SMA for 1 Omnicast Standard/SV-16 Camera – 1 year	$25.00	$1,900.00	
14	SMA-SHP-1Y	SMA for AutoVu Sharp - 1 Year	$105.00	$1,470.00	
				$3,870.00	**$3,870.00**

Software Maintenance (ADDS)

2	SMA-CAM-S-1Y	SMA for 1 Omnicast Standard/SV-16 Camera – 1 year	$25.00	$50.00	
1	SMA-SHP-1Y	SMA for AutoVu Sharp - 1 Year	$105.00	$105.00	
		TOTAL ADDS		**$155.00**	**$155.00**

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Misc Items, (Bonding, Civil Engineering, Etc) (BASE Project)

1	Misc Items	Civil Engineering, Bonding, Consumables, other misc items	$13,530.00	$13,530.00	
		Site Total		$13,530.00	**$13,530.00**

Lens Replacement & Freight

1	Misc Items	(4) ALPR Lens Change out for (4) Cameras shipping to factory and back	$3,615.00	$3,615.00	
		TOTAL ADDS		**$3,615.00**	**$3,615.00**

Additional Project Management

16	Misc Items	Account Project Management & Engineering	$120.00	$1,920.00	
		TOTAL ADDS		**$1,920.00**	**$1,920.00**

Additional Bonding

1	Misc Items	Bonding,			
		TOTAL ADDS		**$151.00**	**$151.00**

New Project Total with changes	**$725,383.51**
Original Project	**-$672,734.51**
Total Change Order Request	**$52,649.00**

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TOWN OF PALM BEACH
951 Old Okeechobee Road
Suite "D"
West Palm Beach, FL 33401
PHONE: 561-838-5406 FAX: 561-835-4688

CHANGE ORDER REQUEST

VENDOR: #005738

Johnson Controls, Inc.

DATE:

PURCHASE ORDER NO.	CHANGE NO.	PREVIOUS AMOUNT	AMOUNT OF DECREASE	NEW TOTAL
121422	2	$672,308.51	$52,649.00	$725,383.51

Above purchase order was issued for the project and purpose described below. It is necessary to increase the order amount by $52,649.00. The revised purchase order total amount will be $725,383.51. Your review and concurrence with this increase is requested.

PROJECT: Town wide Security and Surveillance Initiative

PURPOSE OF PROJECT: Install cameras/equipment and software and provide training to staff per contract and RFP No. 2012-02.

REASON FOR INCREASE IN PURCHASE ORDER AMOUNT: Restrictions on lamp post style and locations and changes in camera locations and installation method to affect most strategic view will add cost to some of the proposed site locations. Other site modifications have been implemented where possible resulting in reductions that will offset some of the additional expenses. (See Exhibit A – Modifications of Scope of Work by Location).

RECOMMENDED FOR APPROVAL

Kirk W. Blouin, Director of Public Safety

APPROVED

Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 145-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Twelve Month Extension of the Contract Between the Town of Palm Beach and National Recovery Agency for EMS Billing Account Collections and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

Kirk Blouin, Director of Public Safety

Supporting Documents

- Memorandum dated November 5, 2012, from Kirk Blouin, Director of Public Safety
- Resolution No. 145-2012
- Emergency Medical Services (EMS) Collection Services Contract
- National Recovery Agency Approval Documents

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Director of Public Safety

Re: Contract Extension with National Recovery Agency for EMS Account Collections
Resolution No. 145-2012

Date: November 5, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council authorize the Town Manager to extend the contract with National Recovery Agency for the collection of delinquent EMS billing accounts.

GENERAL INFORMATION

The initial contract with National Recovery Agency (NRA), signed in 2011, which incorporates RFQ No. 22-2011 by reference, allows for extension of the contract for two 12-month periods upon mutual agreement of the parties. This request is for the first extension of this contract.

The Fire Rescue Department requests your approval, and National Recovery Agency has agreed, to renew the contract for the first 12-month period with the same terms, conditions, and fees as the original contract.

FUNDING/FISCAL IMPACT

Extension of this contract will be with the same terms, conditions, and fees. There will be no additional funding/fiscal impact.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

Resolution 145-2012 has been reviewed and approved by the Town Attorney for legal form and sufficiency.

:bh

RESOLUTION NO. 145 - 2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A TWELVE MONTH EXTENSION OF THE CONTRACT BETWEEN THE TOWN OF PALM BEACH AND NATIONAL RECOVERY AGENCY FOR EMS BILLING ACCOUNT COLLECTIONS AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

WHEREAS, the Town and National Recovery Agency entered into a Contract on October 13, 2011, a copy of which is attached hereto and which is incorporated in this Contract as if fully set forth herein; and

WHEREAS, the Contract entered into by the Town and National Recovery Agency contains a provision for extension of the Contract for two 12-month periods with all original terms, conditions, specifications, and pricing; and

WHEREAS, it is the desire of the Fire Rescue Department and National Recovery Agency to extend the Contract for the first 12-month period beginning October 13, 2012.

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

Section 1. The Town Manager is hereby authorized and directed to execute a 12-month extension to the Contract with National Recovery Agency for EMS Billing Account Collections.

Section 2. The Town Manager, or his designee, is hereby authorized and directed to take further actions as may be necessary to effectuate the implementation of said contract.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of November, 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH
RFQ NO. 22-2011

EMERGENCY MEDICAL SERVICES (EMS)
COLLECTION SERVICES

CONTRACT

THIS CONTRACT made and entered into this 13 day of October, 2011, by and between the Town of Palm Beach, Florida, hereinafter referred to as the TOWN, and NRA GROUP, LLC d/b/a NATIONAL RECOVERY AGENCY ("NRA"), a Pennsylvania limited liability company, whose address is 2491 Paxton Street, Harrisburg, Pennsylvania 17111, hereinafter referred to as the CONTRACTOR.

WITNESSETH, that the CONTRACTOR and the TOWN for the considerations hereinafter named agree as follows:

The CONTRACTOR hereby agrees to furnish services for delinquent accounts referred to CONTRACTOR by the TOWN in accordance with the provisions for the project entitled:

RFQ NO. 22-2011
EMERGENCY MEDICAL SERVICES (EMS)
COLLECTION SERVICES

All in accordance with the requirements and provisions of the following documents which are hereby made a part of this Contract:

All work performed shall be in accordance with the following documents:

A. Specifications set forth in RFQ No. 22-2011, Emergency Medical Services (EMS) Collection Services, a copy of which is attached hereto and hereby made a part of this Contract.

B. Response to RFQ No. 22-2011 from CONTRACTOR, a copy of which is attached hereto and hereby made a part of this Contract.

This agreement incorporates by reference all of the documents set forth above.

Contract Sum Proposal

The Contractor herein shall charge commission on payment amounts received in connection with Referred Accounts ("payments") at the rate of nine percent (9%) on all Primary Placement Accounts. With respect to any Referred Account in which legal action is taken, Contractor shall charge thirty-five percent (35%) on amounts realized. These fees include the entire scope of work. The Town of Palm Beach will not incur any additional fees other than those stated herein.

Confidentiality

A. The parties acknowledge and agree that as a result of and through the performance of this agreement it may become necessary to disclose to the other party confidential information. Confidential information shall be considered to include, but not be limited to, information contained on computer hard drives, disks, tapes or other computer media that contains, among other things, the names, addresses, account numbers, phone numbers, and other pertinent information regarding Town's customers; all written communications to Town customers; and all such other materials provided by either party for use in the performance of this agreement ("confidential Information").

B. For purposes of this agreement, confidential information shall not include anything that is well known in the trade; that is now or that may become available to the public through no fault of the receiving party or breach of the agreement; that is disclosed with the prior written approval of the disclosing party; that is required to be disclosed by law or, that was lawfully disclosed to the receiving party by a third party; or that was independently developed by the receiving party as evidenced by the receiving party's written records.

C. The parties agree that all confidential information shall remain the exclusive property of the disclosing party. The receiving party shall safeguard and hold confidential from disclosure all confidential information received from the disclosing party and will use the same degree of care it uses to protect its own confidential information, but in no event any less than reasonable care. The parties agree to use such confidential information solely for the purposes contemplated by this agreement and not to share or divulge any confidential information except with those of its employees or third parties having a "need to know" in order to carry out their function in connection with such efforts or the administration of this agreement, and who have been advised of the conditions and are subject to the obligations set forth herein, except as may be required by law. All confidential information received shall be returned to the disclosing party upon written request or upon the termination of this agreement.

D. In addition, Contractor agrees to maintain the confidentiality of any debtor health-related information it may receive from Town and shall:

1. Use appropriate safeguards to prevent any use of disclosure of such information, other than as permitted or required by law;

2. Not use or further disclose such information in a manner that would violate the requirements of law;

3. Report to Town any use or disclosure of such information in violation of this agreement of which it becomes aware;

4. Ensure any subcontractors or agents to whom such information is provided agrees to be bound by and is subject to the same restrictions and obligations that apply to Contractor with respect to such information.

5. Make its internal practices, books and records relating to the use and disclosure of such information available to Town and/or State and/or Federal agencies for purposes of determining compliance with the law; and

6. Upon termination of this agreement, return or destroy all such information received from Town, including all copies. The destruction or return of such information shall be determined by Town.

Indemnification

To the fullest extent allowed by law, the Contractor shall protect, defend, reimburse, indemnify and hold harmless the Town of Palm Beach, and the Town's officers, agents, employees, free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys' or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character in connection with, or arising directly or indirectly out of or related to this agreement and the work performed hereunder. Without limiting the generality of the foregoing, Contractor's indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Contractor agrees to investigate, respond, adjust and provide a defense for all and any such claims, demands and actions at Contractor's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, Contractor's indemnity shall not extend to liability for damages to persons or property to the extent such dmamge was caused by any act, omission or default of the Town or by the Town's officers, agents and employees.

Contractor acknowledges and agrees that Town would not enter into a contract without this indemnification of Town by Contractor and that Town's entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions

shall survive the expiration or earlier terminaton of the agreement. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statute 768.28.

Termination

A. Termination for Convenience

1. This Agreement may be terminated for convenience by either party upon not less than thirty (30) days prior written notice to the other party.

2. Upon termination of this Agreement for convenience, Contractor will continue to provide services for 180 days (the "Termination Period"). Any accounts that have active payment arrangements at the conclusion of the Termination Period may be kept by Contractor for an additional 180 days from the date the last payment was made.

3. Contractor shall deliver to Town a list of Town's accounts upon returning such accounts.

4. Contractor will remit the total amount held in trust to Town within thirty (30) days of termination of this Agreement for convenience, and return all Referred Accounts to Town within the time frame specified in section (ii) above. Town will pay all outstanding Commissions due to Contractor, if any, within thirty (30) days of the later to occur of (a) the date of termination, or (b) receipt by Town of Referred Accounts.

B. Termination for Cause

1. In the event of discovery of a material breach or default of the Agreement by Contractor or Town, the non-breaching party shall first make proper notice to the breaching party and will cooperate with that party's good faith efforts to resolve the material breach or default within thirty (30) days (the "Cure Period"). If the breaching party fails to cure during the Cure Period, the non-breaching party may immediately terminate the Agreement for cause.

2. Upon termination of the Agreement for cause by Town, all Referred Accounts shall be returned to Town immediately. Upon termination of the Agreement for cause by Contractor, Contractor shall have the option of returning Referred Accounts immediately to Town or within the time frame specified in section A (ii) above.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

WITNESSES:

9/14/2011

CONTRACTOR:

NRA GROUP, LLC, d/b/a NATIONAL RECOVERY AGENCY

By _____

Steven C. Kusic

Print Name and Title

ATTEST: _____

Secretary

WITNESSES:

Cheryl Bleau

Gayle Gordon

TOWN OF PALM BEACH, FLORIDA

By _____

Peter B. Elwell, Town Manager

ATTEST: _____

Town Clerk

Recommend Approval:

_____

Date_____, 2011

Approved as to legal form and sufficiency:

_____

John C. Randolph, Town Attorney

Date 9/27, 2011

Recommend Approval:

_____

Kirk Blouin, Public Safety Director

Date September 20, 2011

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Town of Palm Beach Fire-Rescue
Fire Rescue Department

October 16, 2012

Cathy Talalai, Client Services Representative
NRA Group LLC
dba National Recovery Agency
2491 Paxton Street
Harrisburg, PA 17111

Ref: Contract Dated October 13, 2011, First Renewal

Dear Ms. Talalai:

Our contract referenced above expired on October 13, 2012. As specified in Section 1-8 of RFP 22-2011, which was made part of the original contract, we have an option to renew the existing contract for another one year period if it is mutually agreeable to all parties.

Please advise by signature below, if a one year extension of our current contract at same terms, conditions, specifications and pricing would be acceptable.

Requirements of the Palm Beach County Inspector General's office are attached for your review and signature.

Please, complete and return these forms to the Fire Rescue Department by no later than 5:00 PM on October 30, 2012. Your response may be faxed to 561-838-5408.

Respectfully,

Belinda Hardy
Office Manager

✓ I hereby agree to a one year extension of the subject contract.

_____ I do not approve a one year extension of the subject contract for the following reasons:

_____

_____

SIGNATURE

10/18/2012
DATE

Shell Sharma
NAME (PRINT)

300 North County Road, Palm Beach, Florida 33480 PH: 561-838-5420 Fax: 561-838-5408

ACKNOWLEDGMENT

The contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and in furtherance thereof may demand and obtain records and testimony from the contractor and its subcontractors and lower tier subcontractors. The contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination.

Company Name: NRA Group LLC

Authorized Signature: _____

Title: COO/COO

Date: 10/8/2012

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 146-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Waiving the Purchasing Manual Policy to Allow Material Purchases in Excess of $25,000 by Quotes in Lieu of Sealed Bids and Establishing an Overall Project Budget of $200,000 to Replace a Section of Sewage Force Main on 23rd Street East of Tamarind Avenue in West Palm Beach, Florida.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 2, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 146-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Waiver of Procurement Procedures and Authorize Funding for the 30 Inch Force Main Improvements
Resolution No. 146-2012

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 146-2012, waiving the procurement procedures for purchase of materials in excess of $25,000, to authorize the Town Manager to issue purchase order(s) for said materials, and authorize funding not to exceed $200,000 to replace a section of 30 inch force main on 23rd street, east of Tamarind Ave in West Palm Beach.

GENERAL INFORMATION

The Town sends sewage through West Palm Beach to a sanitary sewerage lift station near 23rd street and Tamarind Avenue in West Palm Beach designated as LS 22, which re-pumps the sewage to the East Central Regional Water Reclamation Facility (ECRWRF). The Town is currently renovating its Master Sewage Pump Station, S-2, to be able to pump directly to the ECRWRF to allow the abandonment of LS 22. The Town's pump station work is to be completed in mid-December, 2012.

LS 22 is in extremely poor condition. Recently, a section of the wet well top slab failed and dropped into the wet well. This past week, one of the pumps drew in a piece of debris rendering the pump inoperable. Portable back up pumps are in place to take the place of this pump. Town and City staff both agree that this station needs to be taken off line ASAP. All efforts are being made to expedite completion of all work to get this station off line.

In 1992, a section of the Town's 30 inch ductile iron pipe force main failed east of Tamarind Avenue and an approximate 200 foot section was replaced with high density polyethylene pipe (HDPE). It was recently discovered that this pipe has a pressure rating between 45 and 65 psi. When LS 22 is taken off line and the Town pumps its sewage directly to the ECRWRF, the pressure on this main will increase. The pressure rating of this HDPE pipe is less than what is needed, so the pipe needs to be replaced before LS 22 is bypassed.

Time is of the essence to get this pipe replaced before S-2 is completed in mid-December so LS 22 can be taken off line. The Town intends to use a contract issued by Palm Beach County to hire a contractor to lay the replacement pipe. Under this contract, the Town must purchase the materials. The material cost is estimated to be between $30,000 and $40,000. In accordance with the Town's Purchasing Manual,

material purchases that exceed $25,000 must be approved by Town Council following a sealed bid process. If this procedure is followed, we would not be able to obtain bids for Town Council award until December 11, 2012, and the pipeline would not be replaced until January 2013.

In order to expedite the process, Town staff is recommending that Town Council grant a waiver to the Purchasing Manual policy to allow quotes to be received in lieu of sealed bids. This is permitted under section 6-1.7 of the manual, Waiver of Procurement Procedures, which states:

> 6-1.7 Waiver of Procurement Procedures: The Town Council may authorize the waiver of procurement procedures upon the recommendation of the Town Manager that it is in the Town's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchasing authorized by waiver process shall be acquired after conducting a good faith review of available sources and negotiation as to price, delivery and terms.

In anticipation of Town Council granting this waiver, Town staff will solicit quotes and be prepared to issue a purchase order on November 16, 2012 so this material may be received at the earliest possible date and installed, allowing LS 22 to be taken off line as soon as S-2 is completed.

Town staff is also seeking authorization for a project budget of $200,000 to have the replacement pipe installed. This will fund labor, equipment, materials, maintenance of traffic, roadway restoration, permitting and consultant management of the project. Funds are available in the Town's capital improvement program budget, Sanitary Sewerage Force Main Rehabilitation.

FUNDING/FISCAL IMPACT

This project is not expected to exceed $200,000. Funds are available in the Capital Improvement Program budget for Sanitary Sewerage Force Main Rehabilitation.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

The resolution for this item has been reviewed and approved by the Town Attorney.

cc: Eric Brown, P.E., Assistant Director of Public Works
James M. Bowser, P.E., Town Engineer
Chuck Langley, P.E., Senior Project Engineer
Doug Terry, Water Resources Manager

RESOLUTION NUMBER 146-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, WAIVING THE PURCHASING MANUAL POLICY TO ALLOW MATERIAL PURCHASES IN EXCESS OF $25,000 BY QUOTES IN LIEU OF SEALED BIDS AND ESTABLISHING AN OVERALL PROJECT BUDGET OF $200,000 TO REPLACE A SECTION OF SEWAGE FORCE MAIN ON 23RD STREET EAST OF TAMARIND AVENUE IN WEST PALM BEACH, FLORIDA.

* * * * *

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

Section 1: Time is of the essence to by-pass LS 22 in West Palm Beach which is in poor condition and needs to be taken off line at the earliest possible date due to structural and mechanical failures encountered at the station.

Section 2: Town staff has enlisted a consultant to design the replacement of a substandard section of sewage force main east of Tamarind Avenue in West Palm Beach which needs to be replaced so LS 22 can be taken off line.

Section 3: In order to expedite the abandonment of LS 22, it is necessary to purchase necessary materials by quote in lieu of sealed bids as required by the Town's Purchasing Manual.

Section 4: In accordance with section 6-1.7, Waiver of Procurement Procedures, Town Purchasing manual, Town Council hereby authorizes the purchase of materials related to the replacement of a section of sewage force main east of Tamarind Avenue in West Palm Beach by quotes in lieu of sealed bids.

Section 5: A project budget in the amount of $200,000 is hereby established to replace a section of force main east of Tamarind Avenue in West Palm Beach, with funds coming from the Capital Improvement Program fund line item, Sanitary Sewerage Force Main Rehabilitation.

Section 6: The Town Manager is hereby authorized to execute the necessary purchase orders on behalf of the Town of Palm Beach for completion of this project.

Section 7: 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 this project, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
ATTEST:	_____
	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 147-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Mock Roos & Associates, Inc. in the Amount of $11,760, and Establishing a Study Phase Budget of $13,000 for the E-3, Garden Road to Tangier Avenue Force Main Study.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated October 29, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 147-2012
- Mock Roos Proposal

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Award Contract for E-3, Garden Road to Tangier Avenue Force Main Study Phase
Resolution No. 147-2012
Accelerated Capital Improvement Program

Date: October 29, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 147-2012 awarding an engineering services contract, on an hourly not-to-exceed basis, in the amount of $11,760 to Mock Roos and Associates for the E-3 Force Main Evaluation and Extensions and establishing a study phase budget of $13,000.

GENERAL INFORMATION

A project contained within the Accelerated Capital Improvement Program is the replacement of the force main from the E-3 Sanitary Sewer Pump Station on Lake Trail at Garden Road to Cherry Lane. The project scope was amended to include the evaluation of extending the E-3 force main from Cherry Lane south to the E-6 Sewer Pump Station at Tangier Avenue at the October 9, 2012 Town Council meeting. A hydraulic analysis will be performed on E-3, E-4 and E-5 to determine the magnitude of improvements needed to the existing pump stations if the E-3 force main is connected directly to the E-6 force main.

The sewage from the north end of the island cascades from Sanitary Pump Station E-1 to E-2 to E-3 then to the E-6 pump station. Significant portions of this flow travels through gravity mains. The time that it takes to reach the E-6 station allows the formation of hydrogen sulfide gas which creates odor problems at the stations. By extending the E-3 force main to the E-6 force main, we would create a closed system between E-3 and the master pump station at S-2 in Bradley Park. We believe we can virtually eliminate odors at E-6, and will likely save on electricity by extending the force main and bypassing the E-6 pump station.

Staff is recommending that a study be conducted to confirm or deny our beliefs and to provide an analysis of any modifications needed to the E-3 and E-6 pump stations. The analysis will consider the cost savings in pump costs and operation and maintenance of an odor control system at our north end pump stations. The current odor control systems have been relatively ineffective

and staff has been considering the need to install a chemical injection system in the north end of the island to control odors. We believe that by extending this force main, we will be able to avoid this chemical injection system and the related annual operation and maintenance costs.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

FUNDING/FISCAL IMPACT

Funding for this project is included in the Accelerated Capital Improvement Program.

TOWN ATTORNEY REVIEW

This resolution has been reviewed by the Town Attorney and approved for legal form and sufficiency.

Attachments

cc: Jane Struder, Director of Finance
James M. Bowser, P.E., Town Engineer
Jeffrey M. Sanon, P.E., Project Engineer
Michael Roach, P.E., Project Engineer
Douglas Terry, Water Resources Division Manager
Lynda Cummings, Purchasing Agent
John C. Randolph, Town Attorney

RESOLUTION NO. 147-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO MOCK ROOS & ASSOCIATES, INC. IN THE AMOUNT OF $11,760, AND ESTABLISHING A STUDY PHASE BUDGET OF $13,000 FOR THE E-3, GARDEN ROAD TO TANGIER AVENUE FORCE MAIN STUDY.

* * * *

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

Section 1. The Town Council hereby awards a contract to Mock Roos & Associates, Inc. for the amount of $11,760 and establishes a study phase budget of $13,000 for the E-3, Garden Road to Tangier Avenue Force Main Project.

Section 2. The Town Manager is hereby authorized and directed to execute a contract on behalf of the Town of Palm Beach for the E-6, Bradley Park to Tangier Avenue, Force Main Replacement Study.

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 purchase of this vehicle, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 15th day of November, 2012.

Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	Robert N. Wildrick, President Pro Tem
	William J. Diamond, Town Council Member
ATTEST:	Richard M. Kleid, Town Council Member
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

MOCK • ROOS
ENGINEERS • SURVEYORS • PLANNERS

OCT 30 2012

October 29, 2012

Mr. Mike Roach, P.E.
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480-2029

Ref. No.: B2057.00
Subject: E-3 Pump Station and Hydraulic Evaluation

Dear Mr. Roach:

We are submitting the attached *Proposal To Provide Professional Engineering Services to Provide a Hydraulic Evaluation of E-3 Forcemain.* Please review the attached documents and return one signed copy of the *Proposal* to our office as our authorization to proceed with the Scope of Services outlined in the proposal.

We will provide the Scope of Services on an hourly basis, plus reimbursable expenses. We anticipate the total fee to provide the Scope of Services will be $11,760.

If you have any questions please contact me at 683-3113, extension 293. Thank you for using Mock•Roos on this project. We look forward to working with you.

Sincerely,

MOCK, ROOS & ASSOCIATES, INC.

Garry G. Gruber, P.E.
Vice President

GGG:jeh
Enclosure
Copies: Bookkeeping

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Proposal To Provide Professional Engineering Services to Provide an Hydraulic Evaluation of the E-3 Forcemain

Services to be provided by: Mock•Roos

Services provided to ("Town"): Town of Palm Beach

Proposal Date: October 29, 2012

Proposal Terms

A. Project Description:

The Town wants to extend the E-3 forcemain from Cherry Lane around the existing gravity sewer and connect it directly to the E-6 forcemain on the discharge side of the E-6 pump station.

The Town's E-3 pump station is located just north of Garden Road on Lake Trail. The E-3 pump station receive flow from the E-1 and E-2 pump stations and pumps the wastewater approximately 4,200 feet south through a 12-inch cast iron forcemain connecting to a gravity sewer line located at Cherry Lane. This gravity sewer line transfers wastewater approximately 2,150 feet to the intake wetwell of the E-6 pump station located at Tangier Avenue on Lake Trail. The E-5 and E-4 pump stations discharge wastewater into the E-3 forcemain north of the gravity sewer line connection at Cherry Lane.

The purpose of this study is to perform a hydraulic evaluation of the pump station impacts (and potential capital and operational costs) of installing an E-3 forcemain extension from Cherry Lane to the E-6 pump station discharge pipeline (E-6 forcemain) and the potential impacts of reduced flows in the existing gravity sewer. Odor control improvements are being included in the Town's S-2 pump station upgrades and an additional odor control evaluation as part of this study is not currently warranted.

Mock•Roos will provide the professional services as outlined under **B. Scope of Services** below.

B. Scope of Services:

1. Meet with the Town to identify and review existing facility information such as as-builts, pump information, flow data, proposed facility plans, and projects currently under design, etc.

2. Perform site visit of the E-3, E-4, E-5, and E-6 pump stations and gravity sewer line tie-in point.

3. Evaluate capacity and pump operation of the existing pump stations (E-3 through E-6) and pipelines. Scenarios will include:

    - E-3 pump station pumping to E-6 forcemain (through E-3 forcemain extension) with E-6 pump station operating.

- E-3 pump station pumping to S-2 through E-3 forcemain extension and E-6 forcemain with the E-6 pump station not operating.

- Extension of E-3 forcemain to E-6 forcemain without the inclusion of E-4 and/or E-5 pump station flows (E-4 and E-5 pump stations to continue to discharge to gravity sewer line at Cherry Lane).

- Variations of the above with E-4 and E-5 pump stations operating.

4. Evaluate the existing gravity sewer system as it relates to size and anticipated reduced flows associated with the pumping scenarios above.

5. Perform a brief electrical evaluation to identify any potential upgrades required based on any increases in pump horsepower requirements as a result of the new operating conditions.

6. Briefly evaluate benefits of lining the existing E-3 forcemain versus other rehabilitation replacement methods.

7. Prepare a draft letter report outlining findings, recommendations and associated estimated pump station upgrade capital and operational power costs. Provide Town with two hard copies, and an electronic copy. Meet with Town to receive comments.

8. Prepare final letter report. Provide Town with two hardcopies and an electronic copy.

C. Additional Services:

1. Any services not included in the Scope of Services will be considered Additional Services.

2. Additional Services can be provided upon Mock•Roos receiving a revised scope of services and approved change order.

D. Fees and Rates:

1. The total fee to provide the Scope of Services is anticipated to be $11,760.

2. Mock•Roos can provide Additional Services at the Mock•Roos hourly rates in effect at that time, plus any reimbursable expenses, or for an agreed upon lump sum fee.

E. Conditions:

1. All terms become valid upon Mock•Roos receiving one complete copy of this proposal within 30 days of its date.

2. In case of discrepancies, the terms of this proposal supersede those of previous agreements.

F. Acceptance and Authorization to Proceed:

1. This proposal is acceptable and Mock•Roos has authorization to proceed with the Scope of Services. This authorization becomes valid upon Mock•Roos receiving a purchase order for these services.

MOCK•ROOS

Signed: _____ 10/29/12

Name: Garry G. Gruber, P.E.

Title: Vice President

Date: October 29, 2012

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Town of Palm Beach E-3 Pump Station and Forcemain Hydraulic Evaluation

Task Description	Labor Classification				
	Project Director	Senior Engineer	Engineer III	Administrative Assistant	Subconsultant / Expenses
Meet with Town	2		2	1	
Site Visit	2		2	1	
Existing Capacity/Pump Operation/Evaluation	1	12	24	2	$150.00
Electrical Evaluation		2			$1,000.00
Evaluate E-3 Forcemain Lining	2	4	8	2	
Draft Letter Report	4	2	4	2	$200.00
Final Letter Report	1	2		2	$200.00
Labor Subtotal Hours	12	22	40	10	
Labor Hourly Billing Rate	$50.00	$48.33	$38.50	$20.00	
Labor Individual Totals	$600.00	$1,063.26	$1,540.00	$200.00	$1,550.00
		Total Mock•Roos Direct Labor		$3,403.26	
		Multiplier		3.00	
		Total Direct Labor @ 3.0		10,209.78	$1,550.00
Project Total	**$11,760**				

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 148-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract with AECOM in the Amount of $4,995, to Provide Bidding Phase Services for Pump Stations A-42 and A-43 Improvements, Establishing a Bidding Phase Budget of $5,500.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 6, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 148-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Award Contract for Bidding Phase Services for Pump Stations
A-42 and A-43 Improvements
Accelerated Capital Improvement Program
Resolution No. 148-2012

Date: November 6, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 148-2012 authorizing a bidding phase services contract to AECOM in the amount of $4,995 and establish a project bidding phase budget of $5,500 for the pump stations A-42 and A-43 improvement project.

GENERAL INFORMATION

Town Council awarded AECOM via Resolution No. 101-10, a design contract for the A-42 and A-43 improvement project. Their previous contract was only for design. Staff is currently planning to advertise this project. By passing this resolution, the Town will fund consultant assistance for the bidding process.

FUNDING/FISCAL IMPACT

The impact to the Town will be $5,500 for the Pump Stations A-42 & A-43 Improvements Project. Funds are available in the projects' budget within the Accelerated Capital Improvement Program.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

These resolutions have been reviewed and approved by the Town Attorney for legal form and sufficiency.

Attachment

cc: Eric Brown, P.E., Assistant Director of Public Works
James M. Bowser, P.E., Town Engineer
Jeffrey Sanon, P.E., Project Engineer
Doug Terry, Water Resources Division Manager

RESOLUTION NO. 148-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING A CONTRACT WITH AECOM IN THE AMOUNT OF $4,995, TO PROVIDE BIDDING PHASE SERVICES FOR PUMP STATIONS A-42 AND A-43 IMPROVEMENTS, ESTABLISHING A BIDDING PHASE BUDGET OF $5,500.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town Council of the Town of Palm Beach hereby authorizes a contract to AECOM in the amount of $4,995, providing bidding phase services for Pump Stations A-42 and A-43 improvements, and establishing a bidding phase budget of $5,500.

Section 2. The Town Manager is hereby authorized and directed to execute this contract on behalf of the Town of Palm Beach for this improvement.

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 completion of the said project work, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
ATTEST:	_____
	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 149-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract for Bidding Phase Services to Mathews Consulting, Inc. in the Amount of $3,505 for Pump Stations A-39 and A-41 Improvements, Establishing a Bidding Phase Budget of $4,000.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated October 29, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 149-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Award Contract for Bidding Phase Services for Pump Stations A-39 and A-41 Improvements
Accelerated Capital Improvement Program
Resolution No. 149-2012

Date: October 29, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 149-2012 authorizing a bidding phase services contract to Mathews Consulting Inc., in the amount of $3,505 and establish a bidding phase budget amount of $4,000 for the pump stations A-39 and A-41 improvements project.

GENERAL INFORMATION

Town Council awarded Mathews Consulting via Resolution No. 04-11, a design contract for the Pump Stations A-39 & A-41 Improvements project. Their previous contract was only for design. Staff is currently planning to advertise this project. By passing this resolution, the Town will fund consultant assistance for the bidding process.

FUNDING/FISCAL IMPACT

The impact to the Town will be $4,000 for the Pump Stations A-39 & A-41 Improvements Project. Funds are available in the projects' budget within the Accelerated Capital Improvement Program.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

This resolution has been reviewed and approved by the Town Attorney for legal form and sufficiency.

Attachment

cc: Eric Brown, P.E., Assistant Director of Public Works
James M. Bowser, P.E., Town Engineer
Jeffrey Sanon, P.E., Project Engineer
Doug Terry, Water Resources Division Manager

RESOLUTION NO. 149-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING A CONTRACT FOR BIDDING PHASE SERVICES TO MATHEWS CONSULTING, INC. IN THE AMOUNT OF $3,505 FOR PUMP STATIONS A-39 AND A-41 IMPROVEMENTS, ESTABLISHING A BIDDING PHASE BUDGET OF $4,000.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town Council of the Town of Palm Beach hereby authorizes a contract to Mathews Consulting Inc. in the amount of $3,505, for bidding phase services for the Pump Stations A-39 and A-41 Improvements, and establishing a bidding phase budget of $4,000.

Section 2. The Town Manager is hereby authorized and directed to execute this contract on behalf of the Town of Palm Beach for this improvement.

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 completion of the said project work, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	Robert N. Wildrick, Council President Pro Tem
	William J. Diamond, Town Council Member
ATTEST:	Richard M. Kleid, Town Council Member
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 150-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Palm Peterbilt, Inc., for the Purchase of One Peterbilt 320 Cab and Chassis with 20 CY Rear Load Packer Body, on FSA Contract No. 12-10-0905 in the Amount of $185,538 and Establishing an Overall Budget of $186,238.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 1, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 150-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Award Contract for the Purchase of One (1) Garbage Collection Truck
Resolution No. 150-2012

Date: November 1, 2012

STAFF RECOMMENDATION

Town staff recommends that Town Council approve Resolution No. 150-2012 for the purchase of one Peterbilt Model 320 Cab and Chassis with Heil 20 CY PT1000 rear load packer body from Palm Peterbilt Truck Centers, Inc. in the amount of $185,538 via the Florida Sheriffs Association Bid #12-10-0905, Specification #12 and #9. Reference quote #Q23527067. The total budget is established at $186,238 to include Town installed items (radios, antennas, RNI fuel system, and decals).

GENERAL INFORMATION

Per the equipment depreciation schedule this truck is due for replacement in 2013. It is necessary at this time to replace one of our existing garbage trucks used for commercial and residential garbage collection and is reflected within the FY2013 Equipment Replacement Fund. Additionally, staff recommends the purchase of an extended warranty from the manufacturer on the engine in the amount of $2,950 through Palm Peterbilt Truck Center Inc.

FUNDING/FISCAL IMPACT

Funds for this purchase will come from the Equipment Replacement Fund in the amount of $186,238. These funds will cover the purchase and extended warranty, as well as $700 for Town installed items (RNI fuel systems, decals, radios, etc.) $195,000 is approved in the FY2013 budget for this purchase.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

The resolution for this item is a standard form that has been previously reviewed and approved by the Town Attorney.

Attachment
cc: Jane Struder, Finance Director
Eric B. Brown, Assistant Director of Public Works/Operations
Chester Purves, Services Manager
Lynda Cummings, Purchasing Agent

RESOLUTION NO. 150-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A PURCHASE ORDER TO PALM PETERBILT, INC., FOR THE PURCHASE OF ONE PETERBILT 320 CAB AND CHASSIS WITH 20 CY REAR LOAD PACKER BODY, ON FSA CONTRACT NO. 12-10-0905 IN THE AMOUNT OF $185,538 AND ESTABLISHING AN OVERALL BUDGET OF $186,238.

* * * * *

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

Section 1: In accordance with FSA Contract No. 12-10-0905, the Town of Palm Beach hereby authorizes the purchase one, Peterbilt 320 Cab and Chassis with 20 cy rear load packer body, for the purchase price of $185,538, and establishes an overall budget of $186,238.

Section 2. The Town Manager is hereby authorized to execute a purchase order on behalf of the Town of Palm Beach for this vehicle.

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 purchase of this vehicle, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent - Other

Agenda Title

Authorization to Proceed with Everglades Island Notice of Intent to Use Special Non-Ad Valorem Assessments.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated October 23, 2012, from Thomas G. Bradford, Deputy Town Manager

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Authorization for Staff to Proceed with the Assessment Process for the Everglades Island Underground Utilities Project

Date: October 23, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council authorize staff to proceed with the steps required by F.S. 197.3632 to form an assessment area to recoup capital improvement expenditures made by the Town in association with the Everglades Island Underground Utilities Project that is anticipated to be substantially completed by spring 2013.

GENERAL INFORMATION

The Town received a request to form an assessment area with the necessary signed petition for properties located on Island Drive in January 2012. The Town Council approved proceeding with the assessment program on February 16, 2012. Since February 2012, the Town Council has authorized an engineering design and construction observation contract and awarded a construction contract. The Town's contractor, HYPOWER, is anticipated to be substantially complete (90%) with all work by spring 2013. As such, we anticipate being ready to proceed with the Initial Assessment Resolution at the July 2013 Town Council meeting. It is now time to proceed with all of the legal formalities to form an assessment district for payment of the project costs via special non-ad valorem assessments, the same as was previously done for Worth Avenue and Via Fontana.

For now, all that is required is for the Town Council to give its approval to proceed with the first step, which is to publish notice of intent to use the uniform method of assessments for four (4) consecutive weeks. The uniform method of assessment entails placing the annual cost of the assessment on a benefitting property owner's tax bill mailed to them on or about November 1 of each year. If the Town Council decides later in the process that you do not wish to proceed with the assessments for any reason the process is stopped and no assessment appears on tax bills of benefitting property owners. After the notice is published, a public hearing is held at the December 11, 2012 Town Council meeting to adopt a resolution electing to use the uniform method of assessments to recoup the Town's costs to complete the requested project. This is the preferred billing and collection process as it requires no additional Town staff to accomplish and no extraordinary staff efforts to bill and collect for annual assessments.

The assessment will include all project costs, including, but not limited to, design services, engineering, project management, publication of notices, bidding, construction, landscaping removal and installation, fees to the primary utility companies, interest and any and all other professional services associated with the job such as for surveying. The term of the debt is anticipated to be ten years based on the Town's approved internal long term financing plan and depending on what is available in the marketplace in the summer of 2013.

If the Town Council approves this first step, the tentative process to bring this matter to fruition hereafter will be essentially as follows:

- Notice appears in the *Palm Beach Daily News* for four (4) consecutive weeks on November 16, November 23, November 30 and December 7.
- December 11, 2012 – Public Hearing with adoption of a resolution of intent to use non-ad valorem assessments to bill and collect for the Everglades Island UG Project costs incurred within the Everglades Island Assessment Area.
- July 9, 2013 - Adoption of initial assessment resolution. All project costs should be known at this time.
- August 20, 2013 (on or about) – Mail notice to each affected property owner within proposed boundaries of the assessment area advising of same along with date, time and place of adoption of the final assessment resolution.
- September 10, 2013 – Adoption of final assessment resolution.

FUNDING/FISCAL IMPACT

All costs incurred by the Town are internally financed for this and other assessment projects. All costs incurred by the Town are passed on to the property owners benefitting from the improvements constructed in the project by the use of special non-ad valorem assessments pursuant to F.S. 197. 3632.

cc: John C. Randolph, Town Attorney
H. Paul Brazil, Director of Public Works
Jane Struder, Director of Finance
Chuck Langley, Senior Project Engineer
Danny Brannon, P.E., Brannon & Gillespie
Heather Encinosa, Esq.

n:\tgb\agenda items\2012\backup memo authorization for staff to proceed with the assessment process for the Everglades Island underground utilities project 111512tcm.doc

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent - Other

Agenda Title

Request for Approval of Selection Committee for Financial Advisor for Future Bond Issues.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated November 2, 2012, from Jane Struder, Finance Director

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: Request for Approval of the Financial Advisory Services Selection Committee

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the selection committee for the Financial Advisory Services RFP.

GENERAL INFORMATION

The Town will be pursuing future financing for Phase II of the 20 year Accelerated Capital Improvement Program (ACIP) and for the "bondable" portion of the Coastal Protection Program. We plan to issue a Request for Proposals (RFP) from Financial Advisory firms to serve as a consultant and advisor in the implementation of financing for the Town's projects.

Staff is recommending the following individuals for the Financial Advisory Services RFP selection committee.

- Robert Wildrick, Chairman of Finance and Taxation Committee and President Pro Tem of the Town Council
- Denis Coleman, Resident and Former Town Council Member
- Thomas G. Bradford, Deputy Town Manager
- Jane Struder, Finance Director

Once the committee is established, the RFP will be finalized and issued in late November. We expect to award a contract at the February Town Council meeting.

jls
Cc: Mr. Denis Coleman
Thomas G. Bradford, Deputy Town Manager
Lynda Cummings, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent - Other

Agenda Title

Approval of Selection Committee for Contractors to Perform General Utility Projects and Emergency Infrastructure Repairs.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 2, 2012, from H. Paul Brazil, P.E., Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Authorization of Selection Committee for General Utility and Emergency Infrastructure Repair Contractors

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council approve the selection committee identified below and direct staff to receive qualifications from interested Utility Contractors, to short list, to conduct contractor interviews, and to return to Town Council with a recommendation to enter into a contract with the selected contractor(s).

GENERAL INFORMATION

In 2011, the Town interviewed interested contractors to provide underground utility construction services to the Town. The resulting contracts were for a maximum of three years. Town staff is recommending that we initiate a new selection process at this time.

Staff is recommending to Town Council that a Selection Team consisting of the following members be approved:

1. Jane Struder, Finance Director
2. Jay Boodheshwar, Director of Recreation and Special Projects
3. Doug Terry, Public Works Department Water Resources Manager
4. Jeff Sanon, P.E., Public Works Department, Project Engineer

FUNDING/FISCAL IMPACT

There is no fiscal impact associated with approval of this selection committee.

HPB:nb

cc: James M. Bowser, P.E., Town Engineer
Selection Team Members

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent - Other

Agenda Title

Authorization of Selection Committee for Telemetry Replacement.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 2, 2012, from H. Paul Brazil, P.E., Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Authorization of Selection Committee for Telemetry Replacement

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council reaffirm the selection team identified below and direct staff, to receive qualifications from interested contractors for telemetry systems, to short list, and if necessary to conduct interviews, and to return to Town Council with a recommendation to enter into a contract with the selected contractor.

GENERAL INFORMATION

The Town's Accelerated Capital Improvement Program (ACIP) includes improvements that will require the services of contractors experienced in installation and integration of telemetry systems to implement. The previous proposals received were rejected at the September 11, 2012 Town Council meeting. A revised Request For Proposal (RFP) solicitation has been prepared and is being advertised. Upon receipt of those new proposals, staff requests authorization from Town Council to proceed in the selection process again, utilizing a selection team consisting of the same committee members as before with the following minor revisions:

1. James Bowser, Town Engineer or Steve Kartrude, Electrical Bureau Supervisor.*
2. Doug Terry, Water Resources Division Manager.
3. Cheryl Somers, Assistant Director of Finance.
4. Spencer Wilson, Information Systems Manager.
   (Non-voting member: Eric Brown, Assistant Director of Public Works.)

*Due to scheduled participation representing the Town in a pending trial in early December, Mr. Bowser may not be available for the selection committee meeting. If not available, the alternate committee member noted (Mr. Kartrude) will assume the voting role in lieu of Mr. Bowser.

FUNDING/FISCAL IMPACT

There is no fiscal impact associated with approval of this selection committee.

cc: Selection Committee Members
Lynda Cummings, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Consent - Other

Agenda Title

Authorization to Consider Ordinance No. 16-2012 Prior to 5:00 p.m. on December 12, 2012.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated October 29, 2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Request to Consider Ordinance No. 16-2012 prior to 5:00 p.m. at the December 12, 2012 Town Council meeting

Date: October 29, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council conduct the public hearing on Ordinance No. 16-2012 at the December 12, 2012 Town Council meeting prior to 5:00 p.m.

GENERAL INFORMATION

Florida Statutes require the Town Council to hold at least one of two public hearings to adopt a zoning ordinance after 5:00 p.m. However, the Statute provides that the time can be changed if a majority plus one of the local governing body elect to have the hearing at another time. Staff is requesting that the Town Council elect to conduct the second and final reading of Ordinance No. 16-2012, which will be considered at the December 12, 2012 meeting, during the course of the normal Council business. This may occur before 5:00 p.m.

PBE:jsp:pc

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lindgren, AICP, Planning Administrator
zf

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda
Committee Reports

Agenda Title
Administrative & Personnel Committee Meeting of October 2, 2012, Report.

Presenter
Richard M. Kleid, Town Council Member

Supporting Documents

- Report of the Administrative & Personnel Committee Meeting of October 2, 2012

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE
PRELIMINARY HEARING #2 OF SCOTT DUQUETTE APPEAL

I. CALL TO ORDER AND ROLL CALL

The Hearing was called to order at 1:00 p.m. on Tuesday, October 2, 2012, in the Town Council Chambers. On roll call, all Committee Members were found to be present.

II. APPROVAL OF AGENDA

Motion was made by Committee Member Rosow, and seconded by Chairman Kleid, to approve the Agenda, as printed. On roll call, the motion carried unanimously.

III. PRELIMINARY HEARING INCLUDING:

A. REVIEW, CONSIDERATION AND DELIBERATIONS REGARDING MATTERS AND OBJECTIONS RAISED IN DUQUETTE'S PRE HEARING BRIEF AND TOWN'S RESPONSE

Chairman Kleid expressed concern over both parties' submission of documents after the original brief from the Appellant and the rebuttal from the Appellee had been filed. Between the original filings and the subsequent responses and rebuttals, additional issues were raised. He stated that the intent of the Administrative and Personnel Committee (APC) at the last hearing was for one brief and one rebuttal to be filed.

APC Attorney Kilbride stated that the Committee has the discretion to consider the subsequent documents or not. Both parties have the right to raise issues at the pre-hearing or the evidentiary hearing.

Chairman Kleid and Committee Member Rosow concurred that the APC should consider all of the documents filed, and that a time limit should be set for oral arguments.

Committee Member Rosow asked Attorney Kilbride to identify the issues to be considered for members of the public.

Attorney Kilbride stated that the issues before the APC are the following:

1. Whether the recusal of the Grievance Resolution Board (GRB) was appropriate due to Town Manager Elwell serving as the Chair of that Board
2. Whether recusal of the GRB violated Mr. Duquette's rights
3. Whether the Town of Palm Beach was retaliating against Mr. Duquette in response to the independent investigation of six EOC complaints
4. Whether the recommended disciplinary action was appropriate
5. Whether the witnesses in the investigation were required to provide their testimony under oath
6. Whether the final report issued by Peter Sampo needed to be verified

Motion was made by Committee Member Rosow, and seconded by Chairman Kleid, to:

1. **Join and deny Issues 1 and 2**
2. **Consider Issues III and IV during the evidentiary hearing**

On roll call, the motion carried unanimously.

Motion was made by Committee Member Rosow, and seconded by Chairman Kleid, to deny Issues V and VI as the APC has determined that they are not required. On roll call, the motion carried unanimously.

B. REVIEW OF PROCEDUREAL RULES FOR HEARING, AS REQUIRED

Attorney Kilbride suggested to the APC that both parties be reminded to avoid irrelevant or repetitive witnesses, and that counsel for both parties work together to agree to stipulations that will expedite the hearing.

Chairman Kleid concurred and added that each party shall be required to exchange a List of Witnesses, with a summary of the nature of their testimony.

The APC and both parties agreed to schedule the hearing for the week of January 28, 2013.

Chairman Kleid noted that Town Attorney Randolph has opined that the Town Council has the authority to issue subpoenas on behalf of the APC, should they be required.

Committee Member Rosow stated that the issue regarding subpoenas will be on next week's Town Council meeting agenda.

It was the consensus of the APC to establish the following procedural rules for the hearing:

1. **The Parties shall exchange a List of Witnesses with a summary of the nature of their testimony on or before December 3, 2012.**
2. **The Parties shall exchange a List of all Exhibits they intend to offer into evidence on or before January 17, 2013. Witnesses or Exhibits Lists not listed or exchanged in accordance with this schedule will not be considered or permitted into evidence, unless good cause is shown.**
3. **The Parties are requested to make a good faith effort to meet prior to the final hearing to stipulate to facts and the admission of documents, in an effort to abbreviate the time needed for the hearing.**
4. **The final evidentiary hearing is set in this matter to begin on January 28, 2013, at 9:00a.m. at Town Hall.**
5. **The Parties will each be given thirty-five (35) minutes for opening statements and two (2) hours for a closing statement.**

Committee Member Rosow stated that the Town will present their case first, then the appellant, and time will be allotted for rebuttals. Chairman Kleid concurred.

C. OTHER PRELIMINARY MATTERS AS DEEMED APPROPRIATE BY THE COMMITTEE

Attorney Kaplan requested that a secondary preliminary hearing be set to discuss the issue of whether or not the Police Officers' Bill of Rights was violated.

It was the consensus of the APC to deny the request.

IV. ADJOURNMENT

There being no further business, the Administrative and Personnel Committee Meeting of Tuesday, October 2, 2012, was adjourned at 4:54 p.m.

APPROVED:

_____
Richard M. Kleid
Chairman

ATTEST:

_____
Susan A. Owens, MMC
Town Clerk

_____
Date

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda
Committee Reports

Agenda Title
Administrative & Personnel Committee Meeting of November 5, 2012, Report.

Presenter
Richard M. Kleid, Town Council Member

Supporting Documents
- Report of the Administrative & Personnel Committee Meeting of November 5, 2012

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE
PRELIMINARY HEARING OF JASON VEGA'S DISCIPLINARY APPEAL

I. CALL TO ORDER AND ROLL CALL

The Hearing was called to order at 9:51 a.m. on Monday, November 5, 2012, in the Town Council Chambers. On roll call, all Committee Members were found to be present.

It was noted for the record that the Appellant and his counsel were not present as his counsel had been delayed at court.

II. APPROVAL OF AGENDA

Motion was made by Committee Member Rosow, and seconded by Chairman Kleid, to approve the Agenda, as printed. On roll call, the motion carried unanimously.

III. ESTABLISHMENT OF PROCEDURAL RULES FOR HEARING

It was the consensus of the Administrative and Personnel Committee (APC) to establish the following procedural rules for the Jason Vega hearing:

1. **The APC hearing will be limited to review of the Grievance Resolution Board's (GRB) proceedings and ruling.**
2. **The Appellant shall be required to submit a brief stating his position and why he believes the GRB's decision was improper.**
3. **The APC will not rehear witness testimony from the GRB hearing.**
4. **Time will be allotted for oral and closing arguments.**
5. **The APC will be provided with the evidence submitted at the GRB hearing, and any applicable transcripts the parties may deem necessary. Each party will be responsible for transcribing the portions of the hearing they will be entering into evidence.**
6. **Appellant must file a brief within thirty (30) days of this hearing. The Town will have twenty (20) days in which to respond. Requests for one enlargement of time may be considered upon evidence of good cause shown.**

7. **After the brief and rebuttal have been submitted, Attorney Hanley will contact the parties to coordinate a date for the hearing.**
8. **The Chair will review the evidence submitted, and any requests from the parties, and determine the appropriate length of time for oral arguments. Any time left over may be reserved for rebuttal.**
9. **The Town will present its case first, followed by the Appellant.**

It was the consensus of the Administrative and Personnel Committee (APC) to establish the following procedural rules for future APC hearings <u>where the Appellant is appealing the decision of the GRB</u>:

1. **The APC hearing will be limited to review of the Grievance Resolution Board's (GRB) proceedings and ruling.**
2. **The Appellant shall be required to submit a brief stating his position and why he believes the GRB's decision was improper.**
3. **The APC will not rehear witness testimony from the GRB hearing.**
4. **Time will be allotted for oral and closing arguments.**
5. **The APC will be provided with the evidence submitted at the GRB hearing, and any applicable transcripts the parties may deem necessary. Each party will be responsible for transcribing the portions of the hearing they will be entering into evidence.**
6. **Deadlines for submission of briefs and evidence will be set prior to the hearing. Any documentation received after those dates may not be considered by the APC unless good cause is shown.**
7. **After the briefs and rebuttals have been submitted, Counsel for the APC will contact the parties to coordinate a date for the hearing.**
8. **The Chair will review the evidence submitted, and any requests from the parties, and determine the appropriate length of time for oral arguments.**

It was the consensus of the Administrative and Personnel Committee (APC) to establish the following procedural rules for future APC hearings where <u>the Appellant has waived their right to go before the GRB and has, instead, appealed directly to the APC</u>:

1. **The APC will consider these cases as "de novo" hearings. Factual evidence and witness testimony will be heard by the APC.**
2. **Counsel for the APC will utilize the procedures set forth by Attorney Kilbride for the APC and GRB meetings he serves as Counsel for. The APC reserves the right to modify these procedures as they deem necessary.**

IV. PRELIMINARY HEARING MATTERS – None

V. ADJOURNMENT

There being no further business, the Administrative and Personnel Committee Meeting of Monday, November 5, 2012, was adjourned at 10:30 a.m.

APPROVED:

_____
Richard M. Kleid
Chairman

ATTEST:

_____
Susan A. Owens, MMC
Town Clerk

_____
Date

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Board/Commission Annual Report

Agenda Title

Annual Report-Planning and Zoning Commission

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated October 29, 2012
- 2012 Annual Report - Planning and Zoning Commission/Local Planning Agency

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Annual Report - Planning and Zoning Commission

Date: October 29, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council hear and accept the Planning and Zoning Commission Annual Report for 2012.

GENERAL INFORMATION

Attached is a summary of the activities of the Planning and Zoning Commission for the past year, as well as items currently being studied. The Chairman of the Planning and Zoning Commission is prepared to address the Town Council with comments regarding the Planning and Zoning Commission's activities, and to answer any questions.

If you have any questions about any of the attached information, please contact Paul Castro, Zoning Administrator, at 227-6406.

Attachment

PBE:jsp:pc

cc: Planning and Zoning Commission/LPA
Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
zf

2012Annual Report - Planning and Zoning Commission/Local Planning Agency

The Planning and Zoning Commission, as the Town's Local Planning Agency, meets on the third Tuesday of every month to consider planning and zoning issues. The Planning and Zoning Commission acted on the following items in 2012:

- Considered The Testa Family, Inc., comprehensive plan amendment and zoning text amendment application which would have created an overlay area within the C-TS district between Bradley Place and North County Road and Royal Poinciana Way and Sunset Avenue. The recommendation by the Commission was to allow up to 15 dwelling units per acre, two stories by right and a third story by special exception with less lot coverage provided certain criteria being met. The recommendation was not adopted by the Town Council. The Town Council created the Royal Poinciana Way Committee to study the issue and the Testa Family application was deferred to the February 2013 Town Council meeting.

- Considered Town Code of Ordinance provisions relating to commercial motion picture making within the Town. Recommended that the Council not change the existing ordinance.

- Considered and made recommendation related to cross referencing relevant removal of exotic plant species in the Ocean vista regulations within the Beach Area zoning district. The Council adopted the recommendations of the Commission.

- Considered and made a recommendation to eliminate certain front setback requirements for building east or partially east of the Coastal Construction Control Line and the average setback requirements for building west of North and South Ocean Boulevard. The Council adopted the Commission's recommendation.

- Considered retail vacancies and related parking issues affecting merchants on South County Road in the C-TS district. Based on the report from the Commission, the Council authorized staff to further study the issue.

- Considered a proposal to eliminate the minimum perimeter landscape open space requirement for lots in the R-B and R-C zoning district that are 20,000 square feet or more in area. Recommended that the Council eliminate the perimeter landscape requirement for such lots in those districts (other landscaping regulations suffice). The Council adopted the Commission's recommendation.

- Considered and recommended that strobe, flash and neon lighting be prohibited. The Council adopted the Commission's recommendation.

- Considered and recommended a review and renewal fee for application for administrative approval of outdoor seating. Council adopted the Commission's recommendation for the fees.

- Considered and recommended approval of two housekeeping items which changed the term "occupational license" to "business tax receipt" which is the appropriate term for what is a tax and not a license to do business. Council adopted those changes.

- Considered and made a recommendation to approve a proposal to change parks and recreation use from a "permitted use" to a "special exception" use in those zoning districts where such use is allowed. This issue will be considered by the Town Council in November.

- Considered and made a recommendation to approve a proposal to allow outdoor seating as a permitted use for the municipal Par 3 golf course club house. Council approved the Commission's recommendation.

The Planning and Zoning Commission, as the Local Planning Agency, may be reviewing the recommendations which will be coming out of the Royal Poinciana Way Committee regarding proposed PUD-5 regulations. The proposed PUD-5 would be eligible for those property owners within five acres of the C-TS zoning district bounded by Royal Poinciana Way, Sunset Avenue, Bradley Place and North County Road.

In addition, the Commission will be reviewing and making recommendation on changes to the PUD process in Chapter 134, Zoning in the near future.

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - Old Business

Agenda Title

Enforcement of the 1979 Agreement Regarding the Royal Poinciana Plaza Playhouse.

Presenter

William Diamond, Town Council Member

Supporting Documents

- Memorandum dated November 5, 2012, from John C. Randolph, Town Attorney
- Letter dated August 15, 2012, from William J. Diamond, Town Council Member
- Memorandum dated March 3, 2009, from John C. Randolph, with attachments
- Letter dated May 18, 2005, from John C. Randolph
- Letter dated July 17, 2012, from Patrick Henry Flynn
- Email dated September 24, 2012, from Adam Munder
- Letter dated September 27, 2012, from Patrick Henry Flynn
- Memorandum dated November 8, 2012, from Peter B. Elwell, Town Manager
- Form Letter from Citizens of Palm Beach

$ Memorandum dated November 8, 2012, from Patrick Henry Flynn

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney

Re: Review of Royal Poinciana Playhouse 1979 Agreement

Date: November 5, 2012

STAFF RECOMMENDATION

There is no recommendation from staff in regard to this item. This matter is on the agenda as a result of a request by Mr. Diamond, as indicated in the attached letter, that the matter relating to "Enforcement of the 1979 Agreement regarding the Royal Poinciana Plaza Playhouse" be put on the Town Council agenda for the month of November.

GENERAL INFORMATION

The Council has requested that 1979 Agreement relating to the Royal Poinciana Playhouse be placed on the November council meeting for discussion. This matter has been addressed by the Council in the past and I am providing for the information of the Council in that regard, my memorandum to the Council, dated March 3, 2009, with attachments.

There has been a good deal of other correspondence relating to this matter from various sources. I am not attempting to attach each and every communication in that regard, but I am attaching the following relevant documents.

1. Correspondence from John C. Randolph to Sidney Spiegel, dated May 18, 2005;

2. Correspondence from Patrick Henry Flynn to Adam Munder and Brian Kosoy, dated July 17, 2012;

3. Adam Munder's correspondence to Patrick Flynn, dated September 24, 2012; and

4. Correspondence from Patrick Henry Flynn to Adam Munder, dated September 27, 2012.

One of the primary questions that has been raised before the Council is whether the Final Judgment entered on behalf of the Town by Judge Crow, dated July 10, 2007, addressed the matter of the operation of the Theater. Although I have touched on this in my previous memoranda, I have asked John DeVault, who was the lead counsel in this case, to address that matter. He will be available to address any questions the Mayor and Town Council may have in regard to the Court's Order and is in a position to respond to any other legal questions that the Mayor and Town Council may have in regard to this matter.

Attachments

p:\docs\13156\00008\doc\1ev6313.doc

TOWN OF PALM BEACH

Office of Mayor and Town Council

TO: AUG. 15, 2012

MAYOR GAIL L. CONIGLIO

COUNCIL
DAVID A. ROSOW, PRESIDENT
ROBERT N. WILDRICK, PRESIDENT PRO TEM
WILLIAM J. DIAMOND
RICHARD M. KLEID
MICHAEL J. PUCILLO

PETER ELWELL –

PLEASE PUT ON THE TOWN COUNCIL AGENDA FOR THE MONTH OF NOVEMBER THE FOLLING:

"ENFORCEMENT OF THE 1979 AGREEMENT REGARDING THE ROYAL POINCIANA PLAZA PLAYHOUSE"

THANK YOU

Wm. J. Diamond

WM. J. DIAMOND, COUNCIL MEMBER

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5414 • Facsimile (561) 838-5411
E-mail: mayor@townofpalmbeach.com • council@townofpalmbeach.com
Website: www.townofpalmbeach.com

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 10, 2009

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney

Re: Royal Poinciana Plaza
1979 Agreement

Date: March 3, 2009

STAFF RECOMMENDATION

Staff recommends the Council give consideration to the reasonable reading of the 1979 Agreement and interpret the scope and manner in which the language should be applied.

GENERAL INFORMATION

The Council is being urged to enforce the terms of the March 6, 1979 Agreement between the Town and Poinciana Properties, Ltd. and the Final Judgment so as to require the property owners to lease and maintain the property as a theater for the performing and/or visual arts and for lectures and other special events, the allegation being that the property is neither being leased or maintained for such use. This proposal does not take into account that the language in the 1979 Agreement and the subsequent Final Judgment can be read in another way, i.e., that the property, when leased, must be used and maintained as a theater of the performing and/or visual arts and for lectures and other special events and for no other purpose. The first interpretation, it appears, mandatorily and affirmatively requires that the property, at all times, be used for the purposes stated, thereby making it a violation of the Agreement for the premises to remain vacant. The second, and alternative interpretation, would provide that the building, when it is used for any purpose, is required to be used and maintained only as a theater of the performing arts and other stated uses, but places no prohibition on the property remaining vacant.

Aside from its determination that the language in the Agreement prohibited demolition of the theater, the Court did not adjudicate the meaning of the above referenced language in its Final Judgment dated July 10, 2007, nor was there dispute over the meaning of that language at trial. Indeed, in an Order entered by the Court on a Motion to Dismiss filed in the case, the Court stated:

"The complaint merely seeks a determination as to whether a written agreement between the Town and the Plaintiff is still valid."

The dispute, therefore, was whether the restriction relating to the use of the space was still in effect, the Plaintiff having contended that the Agreement had been terminated since various amendments to the zoning ordinances in the Town had provided the developer with "further development possibilities."

As stated in the Final Judgment, the dispute centered around the last sentence contained in paragraph 3 of the Agreement which stated that none of the restrictions would bind the partnership or the owners of the Royal Poinciana Plaza to the Agreement if at some future date the zoning ordinance was revised in regard to the Plaza so as to provide for "further development possibilities." The Court concluded that the conditions within the 1979 Agreement were not abrogated, that the Town's actions did not provide for "further development possibilities" and that the 1979 Agreement remained intact, in this case citing specifically paragraphs 2E and 2F of the Agreement relating to the requirement to maintain and operate the space as a theater of the performing and/or visual arts and for lectures or other special events.

Having concluded that the Court has not interpreted the meaning and intent of the language of the Agreement as it relates to the operation and maintenance of the theater space, in the event there is a dispute which cannot be resolved between the Town and the owners of the property in regard to the applicable language, it may be that a court of law would have to resolve that dispute by way of an action for declaratory relief. Alternatively, the parties could choose some other method of resolving the dispute, such as a binding arbitration.

In interpreting the meaning of the language within an agreement, a court would first look at the common meaning of the words and would look at the document as a whole, rather than in parts, in order to determine the intent of the language. If the court determines the contractual language is unambiguous, it will apply the clear and unambiguous language of the Agreement to the facts using a "reasonable interpretation" of the language. A municipality's reasonable interpretation of its own language should be given great deference by the Courts. In the event the court determines that the language is ambiguous, the court can go to parole evidence or extrinsic evidence to determine the intent.

On the basis of the above, in the event the Town Council were to attempt to resolve a dispute in regard to the applicable language, it could apply the same rules a court would apply and give the disputed language, when read in context and in the entirety of the Agreement, its reasonable application. The applicable language states as follows in regard to the obligation of the owner:

"2. E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and for lectures or special events. . . .

F. It will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser."

The deed of conveyance of the property between Poinciana Properties, Ltd. and Sidney Spiegel, as Trustee, contains the following language:

> "The Grantee hereby agrees to prohibit use of the so-called "Poinciana Theater" located at the premises for any purpose other than as set forth in paragraph E of Agreement, dated March 6, 1979, between the Town of Palm Beach and Grantor, which Agreement is recorded in Official Record Book 3023, Page 380 of the Public Records of Palm Beach County, Florida."

The Final Judgment of the Court is cited in support of the proposition that the theater space may not remain vacant but must be used as a theater of the performing arts. That language reads:

> "2. The 1979 Agreement, in paragraph 2E and F specifically, requires that the Poinciana Theater, located in the Plaza, be maintained and operated as a theater of the performing and/or visual arts and for lectures or other special events, and prohibits its use for any other purpose."

Council will note that this paragraph in the Final Judgment does not recite exactly the language of the Agreement which at paragraph E states that the owner "will continue to lease the space now occupied and used by the "Poinciana Theater" <u>only</u> for use as a theater of the performing arts. (Underlining supplied.) Furthermore, paragraph F speaking to the restrictive clause indicates that the clause shall <u>prohibit use</u> of the "Poinciana Theater" <u>for any purpose other than as set forth</u> in paragraph E above. The restrictive clause itself provides for an agreement to <u>prohibit use</u> of the Poinciana Theater <u>for any purpose other than as set forth</u> in paragraph E of the Agreement. (Underlining supplied.)

Because the language of the Final Judgment uses wording somewhat different than the language of the Agreement, there may be room for some argument as to the Court's intent. However, because the Court did not interpret the meaning of the language at issue, but determined only that said language is still in force and effect, the Court's language should be read in para materia with the language of the Agreement. When reading the Agreement by itself, the language might reasonably be interpreted as less than an obligation to keep the property occupied, but more of an obligation to use it <u>only</u> as a theater of the performing arts and for no other purposes.

In the event the Council does not feel that based on the wording of the Agreement it can resolve the dispute relating to the interpretation, it can then go to the minutes and events surrounding the Agreement to make an interpretation as to intent. Attached is a copy of the minutes of the Town Council meeting of February 13, 1979, as well as the Building Official's letter of February 21, 1979. Please note specifically paragraph 11 of the minutes which is essentially identical to the language contained within paragraph 2E of the Agreement.

I have stopped short of rendering a conclusory opinion in regard to the application and intent of the disputed language, choosing rather to assist the Council in applying its own reasonable interpretation of the language after considering the matters stated herein, along with any other arguments which may be presented. I will, however, be happy to provide any other information you may need in regard to this matter and to answer any questions you may have.

ATTACHMENTS

1979 Agreement between the Town of Palm Beach and Poinciana Properties, Ltd.
Final Judgment dated July 10, 2007
Town Council Minutes of February 13, 1979
Letter from Edward A. Ehinger, Jr., Building Official, dated February 21, 1979

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A G R E E M E N T

THIS AGREEMENT, made and entered into this 6 day of March, 1979, by and between the TOWN OF PALM BEACH (hereinafter referred to as the "Town"), and POINCIANA PROPERTIES LTD., a Virginia Limited Partnership, authorized to do business in Florida (hereinafter referred to as "Partnership").

W I T N E S S E T H:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Cocoanut Row in the Town of Palm Beach located on land situate, lying and being in the Town of Palm Beach, Palm Beach County, Florida; more particularly described on the sheet attached hereto as Exhibit A; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of the Town of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting of February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

NOW, THEREFORE, know all men by these presents that in consideration of the premises hereinbefore set forth and for other

THIS INSTRUMENT WAS PREPARED BY
STEPHEN L. H. JOHNSON
ATTORNEY AT LAW
[illegible]

good and valuable considerations, the parties do hereby agree as follows:

1. The granting of variance No. 38-78 is contingent upon and subject to compliance by Partnership with the following conditions, to wit:

A. Immediately upon the complete execution of this agreement, Partnership shall simultaneously execute a stipulation with the Town to dismiss the legal action against the TOWN for "Declaratory Judgment and Injunctive Relief" filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida No. 78-508-CA (L) 01 B Civil Division and thereafter stipulation shall be filed and the action shall be dismissed with prejudice.

B. Upon completion of the modified construction proposed to the Council, the buildings and the property shall conform to the requirements of the Zoning Code of TOWN except as to the number and size of non-conforming parking spaces then existing in the Royal Poinciana Plaza and the size of the spaces now existing (and to be added upon demolition of the "Slat House" and to be added as shown in "shaded blocks" on plans) which will continue to be used. No other non-conformity will be permitted.

C. Upon completion of the project, there will be over 15% of landscape open space, as defined by the Zoning Code of TOWN and determined by the Building Official. After construction is completed and certificate of occupancy is issued

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there shall be no conversion of any landscaped areas to paved areas without approval of the Town.

D. All landscaping must be approved on site by Honorable Thomas Mattler, a member of the Town Council, before a certificate of occupancy is granted. In granting such approval said Town Council member will be looking for substantial conformity with both Town Ordinance requirements and with the plans submitted (and to be submitted) and on file with the Building Official. However, the parking spaces which could have been provided in the northeast corner of the property and along the perimeter roads on the east boundary of the property will be eliminated as directed by the Town Council which will add to the number of non-conforming parking spaces permitted.

E. Creation of Unity of Title to prohibit the separate conveyance of any portion of Royal Poinciana Plaza.

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

A. In the event of the demise of the historic Mysore Fig Tree that area within the curb around the base of the tree will be maintained in its entirety as an open landscaped space.

B. There shall be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of Building B (located in the northwest corner of the Plaza) contemplated under

variance No. 35-73 herein, however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings. The compromise plan as finally granted by the Town provides for the destruction of all but approximately 2,400 sq. ft. of the easterly portion of the present "old playhouse building a/k/a Slat House" (located in the southeast corner of the Plaza) and conversion of this area to landscaped parking spaces of the same size as those now in the Plaza. The plans for renovation of the easterly portion of the present "old playhouse building a/k/a Slat House" shall be approved by the Architectural Commission of the Town of Palm Beach. Building A as proposed in the variance application shall not be constructed but shall remain as landscaped parking area.

C. It will not object to or contest by legal action any zoning which precludes further development of any nature in the Plaza and further it will not instigate or participate in legal action to repeal current zoning ordinance.

D. It will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but 10% of total square footage of said retail shops from remaining open after 6:00 p.m.

E It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and

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for lectures or other special events. The current Lessee has agreed that there will be only one matinee performance during the business week (Monday-Friday) beginning with July 1, 1979 through June 30, 1983. Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends. This will not preclude the use of the theater for lectures or other special events on the weekends during the remainder of the year when theater productions are not being presented.

F. It will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.

G. It will not allege economic hardship as a basis to abrogate any of the terms of this agreement.

3. The above conditions shall be construed to be covenants and restrictions running with the land and shall be in full force and effect so long as the structure currently known as the Royal Poinciana Plaza continues to be in existence and is located upon the above-described premises. However, none of the above shall bind Partnership or any subsequent owners of the Royal Poinciana Plaza to this agreement or the current zoning ordinance if at some future date that ordinance is revised as it applies to the plaza and thereby provides for further development possibilities.

4. Upon any breach of the above covenants and conditions by Partnership or its successors and assigns, TOWN shall have all

the rights and remedies allowed by law to require strict compliance with the said covenants and conditions.

5. Under the TDP, with Sanitary Sewage Good Faith Amendment, the commercial allocation will be used in its entirety for this project and Council has approved 1500 gallons more per day to be allocated to accommodate this project.

6. This agreement shall inure to and be binding upon the successors and assigns of the parties hereto. This agreement may be changed only by written amendment executed by the TOWN and Partnership or its successors or assigns.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first aforesaid.

TOWN OF PALM BEACH

By: George R. Frost, Town Manager

ATTESTED BY:

Grace W. Peters, Town Clerk

CORPORATE SEAL

APPROVED

March 6 1979

Edwin L. Hillsboro
TOWN ATTORNEY

POINCIANA PROPERTIES, LTD.

By: [illegible]
General Partner

Doyle [illegible]
As to Partnership

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

Before me the undersigned authority personally appeared GEORGE R. FROST and GRACE W. PETERS, Town Manager and Town Clerk respectively of the Town of Palm Beach, a municipal corporation located in Palm Beach County, Florida, known to me to be the individuals described in and who executed the foregoing agreement on behalf of the Town of Palm Beach and they acknowledged before me that they executed the same for the purposes therein expressed.

Witness my hand and official seal this 6th day of March, 1979.

NOTARY SEAL

Notary Public in and for the State and County aforesaid

My Commission Expires:

PAGE 307 PAGE 305

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

Before me the undersigned authority personally appeared JAMES COMMINS, General Partner of Poinciana Properties, Ltd., a Virginia Limited Partnership, known to me to be the individual described herein and who executed the foregoing agreement and acknowledged before me that he executed the same for the purposes herein expressed.

Witness my hand and official seal this 12th day of May, 1979.

(Notary Seal)

Notary Public in and for the State and County aforesaid

My Commission Expires:

DESCRIPTION

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Coconut Row; on the west by the waters of Lake Worth; on the south by the following described line:

Commencing at the intersection of the northerly right-of-way line of Phipps Hall Way with the westerly right-of-way line of Coconut Row, as said streets are described in deed recorded in Deed Book 810, page 477 and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Coconut Row, a distance of 464.75 feet to the beginning of a curve concave to the east having a radius of 129.60 feet and a central angle of 22°-51'-30"; thence northerly along the arc of said curve, a distance of 137.45 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 55.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from south-west to west of 88°-14'-30", a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 203.43 feet to the beginning of a curve to the northeast, having a radius of 85.03 feet and a central angle of 25°-42'-41", a distance of 37.28 feet; thence northwesterly, a distance of 33.98 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1021, page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 30.03 feet and a central angle of 102°-55'-30" and is 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature, of a curve concave to the west, having a radius of 513.29 feet and a central angle of 15°-35'-22"; thence northerly along the arc of said reverse curvature, a distance of 37.62 feet to a point in a line parallel with and 461.2 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1021, page 226, Public Records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 131.06 feet, more or less, to the waters of Lake Worth and the end of the herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.2 feet, a northerly boundary of 190.74 feet plus 12.08 feet on two different courses coinciding with the south line of the "east approach of Flagler Memorial Bridge", and having a westerly boundary of 71.08 feet coinciding with the west face of an existing concrete bulkhead within the waters of Lake Worth, and all as such nearly rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, recorded in Deed Book 592, page 575 of the Public Records of Palm Beach County, Florida.

PALM BEACH 307 page 387

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY CIVIL DIVISION

CASE NO.: 502005CA005585XXXXMBAO

POINCIANA MANAGEMENT, INC.,

Plaintiff(s),

vs.

TOWN OF PALM BEACH, FLORIDA,

Defendant(s).
_____/

FINAL JUDGMENT

THIS CAUSE came before the Court for non-jury trial on May 7 and May 8, 2007. The Court heard testimony of the witnesses and received exhibits into evidence. The Court has considered the arguments of counsel and the submittals of the parties supporting their respective positions pretrial, and post-trial in the form of proposed Final Judgments. The Court has also reviewed the depositions submitted into evidence and has reviewed the trial transcript in the above matter. The Court is otherwise fully advised in the premises. Based upon the above, and after resolving conflicts in the testimony and evidence, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

The current dispute arises out of differing interpretations of a March 6, 1979 Agreement ("1979 Agreement") between the TOWN OF PALM BEACH ("Town") and the predecessor of the Plaintiff, Poinciana Properties, Limited ("Poinciana") concerning property known as the Royal Poinciana Plaza ("Plaza"). This 1979 Agreement was executed as a result of a variance request and amended variance request by the developers of the Plaza property The Town Council approved the amended variance request subject to various agreed conditions. These agreed conditions included a unity of title to the property, maintenance of a Mysore fig tree and dismissal of the pending suit relating to the

removal of the tree, agreement that upon completion of construction of the one additional building there will be no additional construction of new buildings in the Plaza and an agreement that the space occupied by the Poinciana Theater would be used only as a theater and in the event of sale, such restriction would continue with the land and be contained in the deed of conveyance.

In accordance with this approval, the Agreement was entered into and provided specifically in part as follows:

> 2B. There shall be no construction of any new buildings in the Royal Poinciana Plaza . . . , however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings. . . .
>
> 2E. [The Partnership, its successors and assigns] will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and for lectures or other special events. . . .
>
> 2F. [The Partnership, its successors and assigns] will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.
>
> 2G. [The Partnership, its successors and assigns] will not allege economic hardship as a basis to abrogate any of the terms of this agreement.
>
> 3. The above conditions shall be construed to be covenants and restrictions running with the land and shall be in full force and effect so long as the structure currently known as the Royal Poinciana Plaza continues to be in existence and is located upon the above-described premises. However, none of the above shall bind Partnership or any subsequent owners of the Royal Poinciana Plaza to this agreement or the current zoning ordinance if at some future date that ordinance is revised as it applies to the plaza and thereby provides for further development possibilities

Simultaneously with the execution of this Agreement, unity of title was executed.

The current dispute arises out of interpretation of the last sentence contained in Paragraph 3 above. The Plaintiff contends that the Agreement has terminated by its terms since various amendments to the zoning ordinances in the Town have provided the developer with "further development possibilities". To the contrary, the Town contends that there have been no such further development possibilities as a result of zoning revisions and, in fact, any zoning ordinances subsequent to the execution of the Agreement have, in fact, restricted further development rather than aided further development. Furthermore, the Town contends that the Defendant has waived or is otherwise estopped to assert any termination of the Agreement.

Within a year of the 1979 Agreement, the property was sold to Sidney Spiegel, as Trustee, on behalf of Poinciana Management, Inc., the current Plaintiff. In accordance with the Agreement, the deed transferring the property to the new owner specifically incorporated language which prohibits the use of the Poinciana Theater for any purposes other than set forth in the Agreement. At the same time, Mr. Spiegel, on behalf of the new owners, entered into an Assignment and Assumption Agreement in which he acknowledged and agreed to and accepted the assignment of the 1979 Agreement and assumed all obligations therein.

At the time Mr. Speigel acquired ownership of the plaza, the Town had already approved construction of a new building in the northwest corner of the plaza. Mr. Spiegel, however, abandoned such new construction and instead requested the town allow him to reconstruct and add additional office space to the so called "slat house". The Town Council approved this new construction after Mr. Spiegel confirmed he intended to

maintain in full force the Agreement. This approval was also subject to an amendment incorporating all remaining provisions of the 1979 Agreement. That May 1980 amendment again provided all the remaining terms and conditions of the 1979 Agreement shall remain in full force and effect except as modified herein.

From this amendment in 1980 through 2001, approximately 17 separate amendments were entered into, each amendment specifically providing that all remaining terms and conditions of the [1979] Agreement shall remain in full force and effect. These numerous amendments dealt with the Town's permission to allow continuation of the matinee performances at the Poinciana Theater.

Mr. Spiegel on behalf of the owners now contends that subsequent to 1979 numerous changes to the various zoning ordinances have provided "further development possibilities" and thereby voided the terms and conditions of the agreement. Nevertheless, from 1984, he executed approximately 17 amendments to the Agreement and on each occasion reaffirmed that all remaining terms and conditions of the 1979 Agreement shall remain in full force and effect. At no time until August 2001, did Mr. Spiegel ever advise the Town or suggest that the 1979 Agreement was ineffective or had been voided by "further development possibilities". Pertinent to this was the testimony of Mr. Spiegel when asked why he didn't assert such a position testified, "Because we had the tenant, and were satisfied that as long as the building was being rented or leased, then there was no need to do anything about that". Nevertheless, Mr. Spiegel acknowledged that the Agreement specifically provided that he would not allege "economic hardship" as a basis to abrogate any of the terms of this Agreement.

Subsequent to the 1979 Agreement, the Town adopted various changes in its zoning ordinances as applied to the Poinciana Plaza. Plaintiff contends that a number of these ordinances have created "further development opportunities" which void the Agreement. Principally, the Plaintiff relies upon Ordinance 4-80 which changed the CA zoning for the property to the newly created C-PC Zoning District; Ordinance 6-81 which identified timeshares as a "use"; Ordinance 1-86, which reduced the size of parking spaces from 10x20 to 9x18; Ordinance 1-03 which provided a separate density for hotel and timesharing use. As to whether these Ordinances, in fact, create "further development possibilities" as contemplated by the Agreement, the Court finds the testimony of Robert Moore, Bill Brisson and Charlie Siemon persuasive and the Court accepts their testimony.

Mr. Brisson was intimately involved in the drafting of Ordinance 4-80 and was also involved in Ordinance 6-81. Likewise, he had played a role in Ordinances 1-86 and 1-03. Charlie Siemon analyzed the density allowable within the Plaza prior to Ordinance 4-80 and compared that density with each ordinance change, through the last ordinance in question, 1-03. Robert Moore was the Director of the Planning, Zoning and Building Department of the Town of Palm Beach from January 1981 through September 2005.

Mr. Brisson went through each of the ordinances claimed by the Plaintiff to create further developmental possibilities and explained the reasons for the zoning change as well as the effect upon the Plaza. Specifically, Ordinance 4-80 changed zoning to C-PC which was merely a descriptive term and was not intended to create a "planned unit development". Moreover, under Ordinance 4-80, no uses were allowed which were, in fact, not permitted under the prior zoning, C-A. In regard to 6-81, dealing with timeshares, the

primary purpose was to preserve the residential character of neighborhoods and prevent timesharing from being located in certain residential neighborhoods. As such, this Ordinance did not permit any new use not available in the Plaza prior to March of 1979. Similarly, Ordinance 1-86 dealing with parking did not create any development opportunities within the Plaza. Similarly, Ordinance 1-03 by specifying density figures for hotels and timeshares again did not create any development opportunities not available prior to 1979.

As indicated above, Mr. Siemon made density comparisons under the various ordinances. His calculations establish that there has been a roughly two-thirds reduction in floor space ratio development in the Plaza subsequent to 1979. Thus, from 1979 until June of 2005, there had never been an opportunity for additional building square footage within the Plaza.

While Robert Moore was not Planning Director at the time of the 1979 Agreement, he did testify in regard to the "timeshare" Ordinance, 6-81. It was clear from his testimony that prior to the adoption of that ordinance, timeshares had previously appeared in the Town and was added as "use" to regulate the appropriate places for timesharing. As a result, he opined that there were no further development possibilities existing as a result of said ordinance.

In opposition to this testimony, the Plaintiff presented the testimony of Richard Orman, a Planning and Management Consultant. Mr. Orman's opinion, however, was predicated solely upon an economic analysis which allows construction of timeshares on the property subsequent to 1979. Therefore, Mr. Orman's testimony was predicated upon the fact that timeshare could not have been built on the property to 1979, an

opinion this Court finds the evidence establishes to the contrary. Moreover, the conceptual plan utilized by Mr. Orman to support its position made no economic comparison to those uses allowed prior to the 1979 Agreement. For these reasons as well as others set forth in the record, the Court does not accept the testimony of Mr. Orman.

Conclusions of Law

From October of 1979 through August of 2005, the Plaintiff repeatedly received the benefits under the Agreement without questioning its validity or attempting to disaffirm it. Moreover, in 18 separate amendments to that Agreement throughout the years, Mr. Spiegel on behalf of the Plaintiff, agreed that all terms and conditions of the 1979 Agreement (including those related to the Poinciana Playhouse) remained in full force and effect. In fact, it was only after the Playhouse became economically unviable, that Mr. Spiegel "discovered" that the agreement was void because various ordinances created further developmental possibilities. Under such circumstances and by these acts, Plaintiff has ratified the terms of the Agreement, waived any right to claim that the Agreement is terminated or otherwise is estopped to assert its current position.

Contractual terms and provisions may be waived, both expressly and implicitly. *Gilman v. Butzloff*, 22 So.2d 263, 265 (Fla. 1945). A valid condition in a contract may be waived after its occurrence or upon defective performance if the complaining party continues to recognize the existence of the contract. *Pan Am. Distributing Co. v. Sav-a-Stop, Inc.*, 124 So.2d 753, 755 (Fla. 1st DCA 1960); *In re Westminster Assoc., Ltd.*, 285 B.R. 38, 47 (Bkrtcy. M.D. Fla. 2002). *See also, Scocozzo v. General Dev. Corp.*, 191 So.2d 572 (Fla. 4th DCA 1966)[involving an attempt to rescind and cancel a contract for purchase of a house and lot].

Parties generally waive contractual provisions or conditions by continuing to perform and accept performance under the contract, thereby implicitly acknowledging the existence of the contract. *See, Raimondi v. I.T. Chips, Inc.*, 480 So.2d 240, 241-42 (Fla. 4th DCA 1985)(general rule is that party who continues to accept contractual benefits after a breach and with knowledge of the breach is estopped to assert and waives right to claim termination of the contract for breach of covenant or condition); *Wing, Inc. v. Arnold*, 107 So.2d 765, 768 (Fla. 3rd DCA 1959)(where contract entitled lessor to cancel contract upon condition that lessee destroyed property and failed to rebuild it, lessor waived ability to cancel contract by continuing to perform under contract for two years after occurrence of condition); *Florida East Coast Railway Co. v. Holiday Inns, Inc.*, 323 So.2d 664, 666 (Fla. 3rd DCA 1975)(lessor waived right to cancel contract when it performed under contract and accepted benefits of contract for six years after condition which justified cancellation).

While the Court finds that the Plaintiff is estopped or has waived or has otherwise ratified the terms and conditions of the 1979 Agreement, there have not been "further developmental possibilities" so as to void the terms and conditions of the Agreement. While further developmental opportunities is not defined in the Agreement, both parties agree that the contract should be given its natural meaning or a meaning most commonly understood in relation to the subject matter and circumstances, with a reasonable construction preferred to an unreasonable one. *Royal Investment and Development Corp v. Monty's Air Conditioning Service, Inc.*, 511 So.2d 419, 421 (Fla. 4th DCA 1987).

Likewise, in determining the common meaning of words not defined within a document, the language of the contract itself is the best evidence of the parties' intent.

Dows v. Nike, Inc., 846 So.2d 595, 601 (Fla. 4th DCA 2003). Furthermore, one must look at the whole document rather than parts in order to determine the parties' intent. *See e.g.*, *Robins v. Walter*, 670 So.2d 971, 974 (Fla. 1st DCA 1995). In addition, courts have also looked at the common dictionary definition to determine the common meanings of words. *Winn-Dixie Stores, Inc. v. 99 Cent Stuff – Trail Plaza, LLC*, 811 So.2d 719, 722 (Fla. 3rd DCA 2002). Both parties concur in the dictionary meanings of the words "further development possibilities". "Further" is defined as "in addition" or "additional", *Merriam-Webster's Collegiate Dictionary* (10th ed.); *Black's Law Dictionary* (6th ed.); "development" is defined as "the act, process or result of developing" or "an activity, action, or alterations that changes undeveloped property into developed property,", *Merriam-Webster's Collegiate Dictionary* (10th ed); *Black's Law Dictionary* (7th ed.); and "possibilities" means "the condition or fact of being possible" and the term "possible" means "being something that may or may not occur." *id.* Based on the dictionary meanings, "further development possibilities" would reasonably mean "additional" development possibilities.

Based upon the foregoing, the Court determines that, in fact, there has not been any "further development possibilities" as a result of the various ordinances claimed by the Plaintiff. Therefore, the Plaintiff has failed to establish through evidence that the 1979 Agreement has terminated by its own terms.

The Court is not unmindful that in denying dueling Motions for Summary Judgment, this Court did so on the basis that the contractual language was "ambiguous". Nevertheless, after hearing all the evidence, the Court finds that the language contained in the 1979 Agreement providing for "further development possibilities" is clear and unambiguous as applied to the facts of the present litigation. Under any reasonable

interpretation of the language, and any definition asserted by the parties, there has not been any "additional development possibilities" shown by the evidence. In addition, a municipality's reasonable interpretation of its own ordinance should be given great deference by the courts. *See, Palm Beach Polo, Inc. v. Village of Wellington*, 918 So.2d 988, 993 (Fla. 4th DCA 2006); *Las Olas Tower Company v. City of Fort Lauderdale*, 742 So.2d 308, 312 (Fla. 4th DCA 1999). Only if the municipality's interpretation of its ordinances and statutes is unreasonable or clearly erroneous should a reviewing court substitute its interpretation for that of the municipality. *Palm Beach Polo* at 995, *Las Olas* at 742. Here, the Town's interpretation of the definition of "further development possibilities" can neither be considered unreasonable nor erroneous, nor can Mr. Moore's opinions that the Town's zoning ordinances enacted since 1979 do not provide "further development possibilities" be considered unreasonable or erroneous.

The Court is not unsympathetic to the Plaintiff's position that Poinciana Playhouse is economically unviable. Nevertheless, this is the Agreement that the Plaintiff has made with the Town, an Agreement fully executed by the Town under which the Plaintiff has obtained substantial benefit for a number of years. The Plaintiff's remedy, however, is not in the courts but with the Town Council.

Therefore, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The terms, conditions, covenants and restrictions set forth in the 1979 Agreement, as well as subsequent amendments thereto, are in full force and effect and binding upon Plaintiff.

2. The 1979 Agreement, in paragraph 2E and F specifically, requires that the Poinciana Theater, located in the Plaza, be maintained and operated as a theater of the performing and/or visual arts and for lectures or other special events, and prohibits its use for any other purpose.

3. Plaintiff, as successor and assignee to the 1979 Agreement, does not have the right to demolish the Poinciana Theater.

4. Judgment is hereby entered in favor of the Defendant with the Court reserving jurisdiction to award costs upon proper motion.

DONE AND ORDERED this 10th day of July, 2007 at West Palm Beach, Palm Beach County, Florida.

DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:
LINDA CONAHAN, ESQUIRE, 500 East Broward Blvd., Suite 1400 Ft. Lauderdale, FL 33394
JOHN C. RANDOLPH, ESQUIRE, P. O. Box 3475, West Palm Beach, FL 33402-2475
JOHN A. DEVAULT, III, ESQUIRE, 101 East Adams St., Jacksonville, FL 32202

approves 1 building
no other new buildings
no attack of zoning code
Theatre stays
(Basis for Agreement)

MAYOR WILLIAM B. CUDAHY
COUNCIL
ROBERT M. CRAGG, PRESIDENT
THOMAS M. HUTTLER, PRO TEM
SCHUYLER M. WARWICK, III
CALDWELL C. ROBINSON
WALTER L. RATHBUN

PHONE: (305) 659-5341

THE TOWN OF PALM BEACH FOUNDED 1911

C. S. FROST, TOWN MANAGER
ROBERT J. DONEY, ASST. ADMIN.
PATRICK D. MILLER, ADM. ASSIST.
GRACE T. TOTORE, TOWN CLERK
C. L. MIDDLETON, TOWN ATTORNEY
JOSEPH M. GAFFNEY, CHIEF OF POLICE
DAVID L. GRIDGER, FIRE CHIEF
DAVID E. HARRISON, DIR. PUBLIC WORKS
EDWARD A. CHINNICI, DIRECTOR OF FINANCE
JOHN T. HOWLEY, FINANCE DIR. TREASURER
ROBERT C. HUTCHISON, TOWN CONSERVATOR
HERMAN R. COPE, CHIEF BEACH PATROL
CLARK M. LEE, PURCHASING AGENT
RUSSELL C. BITTER, RECREATION DIRECTOR

OFFICE COPY
Town of Palm Beach
Building Dept.

Town of Palm Beach

P. O. Box 2029
Palm Beach, Florida 33480

February 21, 1979

Poinciana Properties, Ltd.
c/o Mr. Doyle Rogers, Attorney
321 Royal Poinciana Plaza
Palm Beach, Florida 33480

Dear Sir:

Reference is made to your request for zoning variance #39-79 in which at property situated at the southwest corner of the street intersection of Royal Poinciana Way and Cocoanut Row and consisting of all of the property in the "CA" Zoned area known as the "Royal Poinciana Plaza", owned by Poinciana Properties Ltd., you request on behalf of your client, who is the subject property owner, that it might construct within said property boundaries one new building on the lakefront in the northwest corner of said Plaza and one new building along the south property line of said Plaza on a location now partially occupied by the former Channel 5 television station and playhouse building, said new buildings proposed for construction without the provision of off-street parking in entirety, for both the existing and proposed new buildings and uses within said Plaza, as required in Section 6.21 of the Town's Zoning Ordinance.

Please be advised that the Town Council considered your Zoning Variance request #39-78 at the December 12, 1978 Town Council meeting; and after deliberation in the matter, the Council postponed until the Jan. 4 and 10, 1979 Special Town Council meeting any action in said Zoning Variance matter, at which time your new revisions to plans for said proposed building development were given further consideration.

Please be further advised that the Town Council conditionally approved in principle your Zoning Variance request #39-78 at the February 13, 1979 Town Council meeting, said conditions to be developed as an agreement between the applicant and the Town, said agreement to be satisfactory to the Town Attorney and the Town's Administration and recorded in the records of Palm Beach County; and the Council's approval includes as a part thereof that certain plan for

February 21, 1979

page 2 cont'd
Poinciana Properties, Ltd.

the subject project dated and time-stamped received by Townclerk, February 13, 1979, which it has not acted by the Council at the February 13, 1979 Council meeting and which is on file in the office of the Town Clerk as part of the permanent record. After the Town has approved and supplemented and after it has been recorded by the applicant, the Town will provide copy to the Town for the permanent record. Upon the Town's receipt of the approved plans for approval, we reflect the conditions of the agreement and the Town building permit to authorize commencement of construction may subsequently be issued.

The conditions of the Town Council approval of your application under Ordinance 139-78 as contained in the Town Clerk's minutes of the February 13, 1979 Council meeting are as follows (see attached):

You have six months from the date of Town Council's approval within which to implement and approve [illegible]

For information, we are enclosing copy of the section of the Town's building code requiring the provision by the owner of special building [illegible] on the construction of the project and reminding you of the Town's Beach Ordinance.

As to your application for variance from the Town's Flood Damage Prevention Ordinance, the request became unnecessary with your agreement not to construct building "A", which was the building proposed adjacent to the South property line, as shown on the original exhibit plan.

Sincerely,

Edward R. Ellinger, Jr.
Building Official

ERE/jk
enclosures
cc: Mr. John Volk, Architect
Town Attorney
rf

OFFICE COPY
Town of Palm Beach
Building Dept.

Town of Palm Beach

Excerpt of Town Clerk's Minutes of [illegible] 1979 Town Council Meeting
Variance No. 39-78 — Mr. James [illegible] Royal Poinciana Plaza

(1) Provide a unity of title on all property [illegible] included in the Poinciana Shopping Center for the maintenance of permanent open space as now shown on the exhibit plan as presented today;

(2) Continue to maintain the Mysore fig tree. The law suit against the Town will be promptly dismissed upon the execution of the agreement between the Town and the partnership. In the event the tree should later die, that space now occupied by the tree will be forever continued as landscaped open space and not parking;

(3) Only Building B will be constructed as shown today on the exhibit plan;

(4) The only zoning non-conformity will be on the size of the new automobile parking spaces, which will be the same size as the spaces presently in the Plaza;

(5) The approval of the Town's Architectural Commission must be given on the design of the remains (approximately 2400 sq. ft. to remain) of the Slat House (old T.V. Channel 5 studio) to be used for offices and maintenance area;

(6) There can be no conversion of landscaped areas to parking;

(7) There will be no night-hour store openings, except for 10% of the retail store area in the Plaza;

(8) The applicant will promptly file a detailed landscaping plan and Town Councilman T. Hettler will be delegated and selected as the Councilman to approve that plan as well as the completed landscaping at time of final inspection by the Town of said "Building B";

(9) There will be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of "Building B",

February 21, 1979

page 2 cont'd
Variance #39-78 - conditions

provided that this will not prohibit the alteration or renovation of existing buildings and provided further that no increase in the square footage of the said buildings will be effected.

(10) A provision that the property owner [illegible] will not legally attack the town zoning [illegible] to repeal the current town zoning ordinance will be included in the agreement.

(11) The space presently occupied by the Royal Poinciana Theatre will be used only as a theatre for the performing and/or visual arts, and [illegible] other [illegible] events [illegible] and further that there will be only one [illegible] performance per evening with only 1 [illegible] 1979 through June 30, 1983 and [illegible] per lease as entered into after June 30, 1983. There will be no matinees during weekdays and only one on Saturdays. Lectures or other special events will be permitted on a Sunday, if otherwise permitted and allowed by the Code.

(12) A restrictive clause will be contained in the contract of sale of the Royal Poinciana Plaza, if it is ever sold, whereby the purchaser agrees not to use the use of the Royal Poinciana theatre to be located on the Plaza for any purpose other than as set forth in paragraph (e) of the Agreement and as previously stated in this motion.

(13) A restriction of like nature should be contained in the deed of conveyance.

(14) The applicant will not allege economic hardship as a basis to abrogate any of the terms of this agreement or this motion.

(15) All of the conditions of this motion and the agreement will be covenants and restrictions running with the land and shall remain in effect so long as the structure presently standing on the property known as the Royal Poinciana Plaza together with "Building B" continue to be in existance.

(16) The Agreement will be in recordable form and will be recorded in the public records of Palm Beach County, together with the full and complete description of the land which is covered by the Agreement.

Item No. 7 (a) Variance No. 39-78 - (postponed from 12-12-78) James Comyns, Royal Poinciana Plaza; permission to revise building plans submitted with Variance No. 61-77 with regard to location and size of the "old playhouse" building and the site and architecture of the building in the northwest corner. C-A District. Var.39-78

Mr. Doyle Rogers, attorney, addressed the Council. He stated his client has been persuaded to have a plan with less building coverage than what he started out with and that does happen to be the situation here. The original plan showed two buildings and under this compromised plan, the building on the south side proposed to be built will be eliminated. The whole idea is to eliminate the mass of the construction in the Plaza. They propose to build one building Building B, which will be on the Lake at the northwest portion of the property. The present Slat House will be removed except for a small portion which will be used for administration and maintenance area. This will provide 60 additional parking spaces and even more if they are allowed to continue the undersized parking spaces now existing in the Plaza. The Hysore Fig Tree will remain. The Building B will be a three story building. All elevations were exhibited. There will be basement parking of approximately 35 parking spaces. They have proposed an Agreement which will be entered into with the Town, which does dismiss the action filed against the Town on the Hysore Fig Tree. Upon completion of the construction, the buildings would comply with all requirements of the Zoning Code, except for the 84 undersized parking spaces now existing. There will be over 16% of open landscaped area. All landscaping will be approved on site by a member of the Town Council. Subsequent to the completion of construction, his client agrees that if the Hysore Fig tree dies for any reason, this area will be maintained in its entirety as an open landscaped space, unless the Town does want to turn it into parking spaces. They agree there will be no construction of any new buildings in the Plaza. The 2400 feet of space which will be maintained in the Slat House will be renovated. They will not object to or contest by any legal action any zoning which precludes further development in the Plaza. They will not retain any shop to maintain evening hours and will prohibit all but 10% of the shops for remaining open after 6 PM. They will continue to lease the space now occupied by the theatre only for use as a theatre and through negotiation the current lessee of the theatre has agreed there will be only one weekday performance beginning June, 1983. Upon entering into a new lease for the Playhouse, the owner will not permit matinees during the week but only on Saturday. These conditions will run with the land. Upon any breach, the Town can move for whatever compliance procedure is necessary. This will be a recorded document.

Mr. Rogers stated the revised Site Plan of Building B and the demolition of the Slat House was distributed to the Council, as well as a fact sheet.

The total number of parking spaces required is 858. There are 549 existing. The slat house removal area will provide 60 more. The parking under Building B will provide 35 spaces. There are 69 others added for a total of 713. The Building B coverage will eliminate 35 spaces and the Council had requested 25 spaces be eliminated so that would total 70 spaces eliminated and there will be 643 actually provided. There would be a total non-conformity of 213, less the number for the theatre in a separate time demand period after 1983, which would be 172 and this number is less than what was non-conforming previously. The new building will be a restaurant and office building with no retail space. The present non-conformity will be 41 spaces.

Mr. Rathbun asked how many spaces the fig tree would cost them? Mr. Rogers stated it was 107 spaces, or at ground level about 35 spaces.

Mr. Frost asked where the 2400 square feet of the portion of the Slat House remaining would be located? Mr. Comyns stated that this would be along Coconut Row.

Mr. Grace asked if there would be any problem in furnishing an Unity of Title? Mr. Rogers said he had no objection but did wonder if there would be any problem if this was ever turned into condominiums?

Mr. Grace asked if they were going to have a center aisle for landscaping in the new area proposed for parking? Mr. Rogers said there would be.

Mr. Grace stated on the very east end of the area where the Slat House will be removed, there will be an area of parking that will be exposed and he was wondering if the Town Council was willing to give up one more parking space if they would be willing to put some screening at the east end on the north side? Mr. Comyns said his intent was that the landscaping would have to be approved by a member of the Town Council and he certainly had no objection to this area being sight-screened.

Mr. Grace asked if the Agreement could state a condition that the Architectural Commission must approve the treatment of the remaining portion of the Slat House from all elevations? Mr. Comyns said he has no objection to this as the only elevation that would be in question would be the west elevation. Mr. Grace thought the north and south elevations should also be addressed. Mr. Comyns stated he had no objection.

Mr. Grace asked the Council if they want the parking to be brought up to Code or left as it now is? Mr. Warwick thought that in order to be uniform the same spacing that they now have could be maintained. Mr. Hettler stated he has not participated in the discussion because he is a tenant of the applicant but he has been parking there for 16 years and the size of the parking space are adequate as they now exist and he thought it would help the overall plan to keep them the same size, and this would go for the new spaces to be constructed.

Mr. Grace asked if this plan is not carried out, will the tree suit still be dismissed? Mr. Comyns answered affirmatively to which his attorney agreed.

Mr. Grace stated he thought that this particular project will be exempt from the moratorium ordinance that will be passed later in the day, but he wondered if this project does not go forward and the applicant comes in with another amended plan, would this amended plan be considered exempt from the moratorium? Attorney Hiddleton stated a new plan would come under the moratorium, however a modification of this plan would not mean it was a new plan? Mr. Hiddleton stated if the time of six months would run - that would be one basis for saying it was a new application.

Mr. Grace stated he thought that this particular project will be except from the moratorium ordinance that will be passed later in the day, but he wondered if this project does not go forward and the applicant comes in with another amended plan, would this amended plan be considered exempt from the moratorium? Attorney Middleton stated a new plan would come under the moratorium, however a modification of this plan would not mean it was a new plan. Mr. Grace wondered on what basis would it be considered a modification or a new Plan? Mr. Middleto stated if the time of six months would run - that would be one basis for saying it was a new application.

Mr. Grace asked if they would be willing to have not more than 10% of their leaseable space open on Sundays? Mr. Rogers felt that his client had given up a large portion of leaseable space and would not agree to this request.

Mr. Ralph Rubinger addressed the Council and stated he was sure the people facing north in the Towers will be most happy with the plan but he would like some assurance that there will be no cut-off of utilities to the Palm Beach Towers. Mr. Frost stated there are quite a few utilities that run parallel to the seawall that do service the Towers so the construction of Building B will have to be done with a great deal of care in order to prevent a disruption in services.

Mr. Warwick moved that the amended plan of the Poinciana Partnership be approved subject to an agreement, in a form satisfactory to the Town Attorney being drawn which will provide the following:

(1) Unity of Title on all property presently included within the Poinciana Shopping Center on the maintenance of open space as now shown on the plan;

(2) Continue to maintain the Mysore Fig Tree. The suit against the Town will be promptly dismissed upon the execution of the Agreement between the Town and the partnership. In the event the tree were to later die, that space will be forever continued as landscaped open space and not parking.

(3) Only Building B (at the northwest portion of the property) will be constructed.

(4) The only non-conformity will be on the size of the new parking spaces which will be the same size as the spaces presently in the Plaza.

(5) The approval of the Architectural Commission will be given on the design of the remains of the Slat House to be used for offices and maintenance area.

(6) That there be no conversion of landscaped areas to parking.

(7) That there be no night hours except for 10% of the retail store area in the Plaza

(8) That the applicant will file promptly a detailed landscaping plan and Mr. Mettler will be delegated and selected as the Council member to approve that plan as well as the completed landscaping.

(9) There will be no construction of any new buildings in the Royal Poinciana Plaza after the completion of construction of Building B, provided this will not prohibit the alteration or renovation of existing buildings and provided further, that no increase in the square footage of said buildings will be effected.

(10) The provision of the partnership not attacking the zoning, or make and effort to repeal the current zoning ordinance will also be included in the Agreement and the motion.

(11) That the space presently occupied by the Poinciana Theatre will be used only as a theatre for the performing and/or visual arts, and lectures or other special events; provided further, that there will be only one weekday performance beginning with July 1, 1979 thru June 30, 1983, and at such time as a new lease is entered into after June 30, 1983 there will be no matinees during weekdays and only one on Saturdays.

(12) A restrictive clause will be contained in the contract of the sale of the Plaza if it is ever sold, whereby the purchaser agrees to prohibit the use of the Poinciana Theatre so designated on the Plan for any purpose other than as set forth in paragraph (e)of the Agreement and as previously stated in this motion.

(13) A restriction of like nature should be contained in the deed of conveyance.

(14) The applicant will not allege economic hardship as a basis to abrogate any of the terms of this agreement or this motion.

(15) All of the agreements of this motion and the agreement will be covenants and restrictions running with the land and shall remain in effect so long as the structures presently standing on the property known as the Royal Poinciana Plaza together with Building B continue to be in existence.

(16) The Agreement will be in recordable form and will be recorded in the public records of Palm Beach County, together with the full and complete description of the land which is covered by the Agreement.

Mr. Rogers stated he hoped that the Council would not rule out a lecture at the Playhouse on a Sunday, which would cause no problem with the parking.

Mr. Warwick amended his motion to include in Item II the following sentence:

"A lecture or other special event will be permitted on a Sunday, if otherwise provided and allowed by the Code."

Mr. Robinson seconded the motion.

On Roll Call, all members of the Council voted affirmatively. Motion carried.

Mr. Grace extended his thanks to the applicant and his attorney for the way they worked with the Town on this matter. Mr. Conyne thanked the Council.

Item No. 1 - Special Exception No. 1-79 - (deferred from 1-79) Michele Testa, Jr., 231 Royal Poinciana Way; permission to operate an auto rental facility in conjunction with an existing service station. DA District. Mrs. Peters read a letter of withdrawal from the applicant. Mr. Edwin Slote asked if there is any further application by this applicant that he be notified and he too felt that the applicant should be required to submit his agreement with the rental agency with which he will rent cars from and a further condition is that the applicant submit landscaping plans for the property. Sp.Ex.1-79

Item No. 2 - Variance No. 2-79 - Richard Burley, 436 Australian Avenue - permission to erect 11'6" terrace awning on second floor rear. R-C District. Mr. Philip Lambert of 436 Australian Avenue addressed the Council for the applicant. He stated the main reason for this awning is to conserve energy and high electric bills. Mr. Frost gave the Administrative comments: Fire: No objection providing the material is flame-proof. Building Department - no objection providing the awning is installed in a manner so that it can be easily removed in the event of high winds or a hurricane. Town Manager: No objection if they do not add side curtains to this awning. Var 2-79

Mr. Lambert stated he had no objections to complying with the administrative recommendations.

Mr. Hettler moved that Variance No. 2-79 be approved subject to the administrative comments. Seconded by Mr. Robinson. On roll call, all voted affirmatively. Motion carried unanimously.

Item No. 3 - Variance No. 3-79 - William Polan, 900 N. Lake Way - permission to construct residence with 25' setback in lieu of required 30'; also for southeast corner of tennis court to encroach 5' into setback area. R-B District. Mr. James Winters addressed the Council as applicant's attorney and explained this is an empty lot just north of the golf course in the north end of Town. There was conveyed out of this parcel by the previous owner to the northerly property owner a small portion of land on the north side in order to allow them to put in a pool house cabana and dock facilities. This creates a problem in design as a variance will now be needed for the setback. Also the lot does curve at this point and therefore they do need a variance to install the tennis court to encroach 5' into the setback area. Var.3-79

Mr. Frost gave the Administrative comments: Building Official: No objection to the tennis court variance requested provided that sight-screening is provided and no night lighting is installed. He objects to the building setback request because no hardship was demonstrated and if granted, it will set a precedent for future applicants having similar variance requests. Also, the unusual provision of automobile parking along the Bike Trail. Town Manager: There is a dangerous curve here already and perhaps the Council would like to make a further land swap with Mr. Polan. Mr. Hettler asked how this would be done? Mr. Frost answered the curvature would be eased and some kind of a land swap could be made with Mr. Polan.

Mr. Warwick asked what land could be swapped? Mr. Frost explained there are two ninety degree curves here and the radius of curvature could be eased by taking the curve further north and further south. Mr. Warwick asked if this would not take more of Mr. Polan's land? Mr. Frost stated it would and possibly the Country Club's too, but we could give them some back in another location.

Mr. Grace asked the architect, Mr. Kemp Caler if the children's house could be reduced by a few feet? Mr. Caler stated they have tried but his client does not think it is possible. Mr. Warwick asked if they would be willing to enter into a unity-of-title agreement? Mr. Winters stated he had no objection.

Mr. Grace stated there are two street frontages here which could be some justification for the variance. Mr. Grace asked about the drive through the property and garage court on the Lake Trail side? Mr. Caler stated this will be heavily screened with planting on the Lake Trail side.

Mr. Hettler stated this is a dangerous curve in the Town and wondered if something could be worked out here with the Country Club so that the curvature could be modified in some way, and perhaps this should be postponed until next month.

Mr. Hettler moved that the application be continued until the March meeting of the Council during which time in the interim, the Town Manager together with Mr. Winters, the Architect and the contractor meet with appropriate neighbors to see if the curve can be straightened or widened at that location as well as discuss the other problems which the Council has raised today and come back at the March meeting with their recommendations. Seconded by Mr. Rathbun. On Roll Call, all of the Council voted affirmatively.

Item No. 4 - Variance No. 4-79 - L. R. B. Corp. (Hilton Hotel), 2842 S. Ocean Blvd. by Sally Eichusen, permission to construct a pedestrian bridge connecting hotel to pool, thereby exceeding the 150' maximum. RD-2 District. Mrs. Peters stated there was a letter from Attorney Courtnell asking for a month's postponement. Mr. Grace asked that the Site Plan approval be compared with the plan presented for today's meeting. Var.4-79

The Council looked over the plans. Mr. Grace explained the building had been moved considerably closer to the ocean. The site plan approved called for an underground walkway. Mr. Ehinger stated the reason they were here today is that they wanted to have a bridge rather than an underground walkway. Mr. Grace pointed out the site plan approved provided parking for 186 cars and the new plan provides for 149 cars. Mr. Grace asked if there was going to be a restaurant in the hotel? Mr. Seamary explained it would be a dining room for the residents of the hotel. Mr. Grace stated this is always very difficult for the Town to monitor.

FOSTER
JOHNSTON
& STUBBS, P.A.
Attorneys and Counselors

Flagler Center Tower, Suite 1100
505 South Flagler Drive
West Palm Beach, Florida 33401
Telephone (561) 659-3000

Mailing Addr
Post Office B
West Palm Be

John C. Randolph, Esquire
Direct Dial: 561-650-0465
Direct Fax: 561-650-0465
E-Mail: jrandolph@jones-foster.com

May 18, 2005

Mr. Sidney Spiegel
Poinciana Management, Inc.
50 Cocoanut Row, Suite 212
Palm Beach, Florida 33480

Re: Town of Palm Beach
Poinciana Theater
Our File No. 13156.6

Dear Mr. Spiegel:

As attorney for the Town of Palm Beach, I have been requested to contact you in regard to the following. It has been called to the attention of the Town that Poinciana Properties is refusing access to the space known as the "Poinciana Theater" located on the premises of the Royal Poinciana Plaza to those who wish to assess the potential for the continued operation of the theater. Specifically, the Town is advised that a group of individuals which includes Frank Sugrue who, the Town is advised has had over thirty years experience as a former theater owner and operator, has been attempting to have access to the theater so as to evaluate the property for use as a theater

As you are aware the 1979 Agreement between the Town and Poinciana Properties LTD. provides that there is a continuing obligation to lease this space for use as a theater of the performing and/or visual arts and for lectures or other special events. It is the position of the Town that the failure to make a good faith effort to continue the operation of the theater by allowing this group or other interested groups to evaluate the theater for purposes of investigating its continued use as a theater constitutes a violation of the agreement.

The Town understands that this is private property, but is mindful of the obligation, pursuant to the agreement between the Town and Poinciana Properties, to continue the theater operation. Therefore, the Town must insist that you make the theater property accessible to those who have a legitimate interest in viewing the property in order to assess its viability for continuation as a theater.

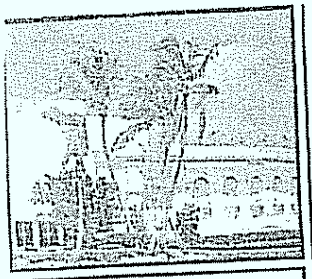
Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

John C. Randolph

John C. Randolph
JCR/sem
cc: Peter B. Elwell, Town Manager

SIGNED IN THE
ABSENCE OF JOHN C.
RANDOLPH TO
EXPEDITE DELIVERY



Palm Beach Theater Guild

"Preserving the Royal Poinciana Playhouse and Plaza For All the Performing Arts"

Trustees
Patrick Henry Flynn
Dr. Elizabeth Bowden
Danielle deBenedictis
Florence E. Flynn
Ellis J. Parker
Christopher Plummer
Simon Taylor
Edward Asplundh
Pamela Pipes
Anne Marie Haynes
Carolyn Jenkins-Jaeger

Advisory Board
Marion Albergo
Lois Cahall
Beatrice Fairbanks Cayzer
Larry F. Cole
Stephania Conrad
Kim Cozort
Douglas Evans
Judie Gibson
Marie Hale
Terry Allen Kramer
Robert P. Leidy
Margaret Luce
Sally O'Connor
Ann Riker
Brian D. Rusk
Muriel A. Shapiro
Leonard Soloway
Jay Sullivan
Shelley Morgan Terry
Dyanne Tosi
Angela Whittaker

Committee of Stars
Edward Albee
Elizabeth Ashley
Stockard Channing
Arlene Dahl
Blythe Danner
Tammy Grimes
Julie Harris
Sally Ann Howes
Barrie Ingham
Dina Merrill
Robert Osborne
Christopher Plummer

Officers
Patrick Henry Flynn
President
Simon Taylor
Secretary

Mr. Adam Munder
Mr. Brian Kosoy
Sterling Palm Beach LLC
70 Royal Poinciana Plaza
Palm Beach, FL 33480
CERTIFIED MAIL RETURN RECEIPT REQUESTED
FIRST CLASS MAIL AND ELECTRONIC MAIL

July 17, 2012

Dear Adam and Brian,

In response to your numerous advertisements that the premises may be leased, enclosed please find a check and a signed lease for the theater building. Please note that the payment of the first and last and security deposit of $60,000.00, the rent would commence upon the date of occupancy at which time the building will be fully up to code and permitted. We are happy to work with you to effect a renaissance of culture in Palm Beach. We would also be interested in entertaining a proposition to step into your shoes as lessee of the Poinciana Plaza and Playhouse. Enclosed is the copy of the 1979 agreement, which requires the owners of the Playhouse to lease the Playhouse.

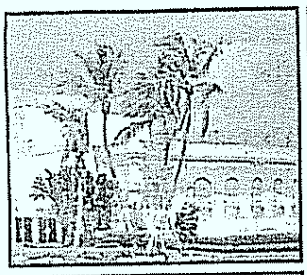
Sincerely,

Patrick Henry Flynn
President
phflynn@gmail.com

CC: Sidney Spiegel

(561) 366-8980 • www.PBTheaterGuild.org • P.O. Box 667 • Palm Beach, FL 33480
The Palm Beach Theater Guild is a registered 501(c)(3) non-profit organization

Let the sky at once that demolishing a building that is dedicated to the Arts and the cultural enhancement of a community is tantamount [illegible] Rembrandt or a Leonardo da Vinci. It is simply a case of greed masquerading as progress. For many a pleasurable year I have been a [illegible] at the Royal Poinciana Playhouse and I hold it very close to my heart. It has been a beacon in our midst—a light we must cherish. [illegible] which has become part of our history—we must not let go"



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Patrick Henry Flynn
President
Simon Taylor
Secretary

Highlights of the Palm Beach Theater Guild Lease Offer:

July 17, 2012

1. The term is ten (10) years with four (4) successive renewals. There is a right of first refusal in the event that the theater building (Royal Poinciana Playhouse) is sold.
2. The price of the lease is $20,000 per month. If the first $20,000 is accepted, the check has a restrictive endorsement which begins the lease.
3. Forty-thousand dollars representing the last month's rent and the security deposit is due within ten (10) days thereafter. "The rent shall subsequently commence when the lessor delivers the premises to the lessee in fully code-compliant condition."
4. "The annual rent shall include all common areas, maintenance fees and property taxes, levied or to be levied against the premises."
5. Upon the date of occupancy, after the building is code-compliant, additional security will be given to the lessor in the amount of a letter of credit for $50,000.
6. Every dollar that the lessee puts in to improvements shall be a dollar deducted from the rent that is due upon submission of a contractor's bill.
7. Subleases to performing arts organizations shall be 10% of the gross proceeds.

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"Let me say at once that demolishing a building that is dedicated to the Arts and the cultural enhancement of a community is tantamount to kicking a hole in a Rembrandt or a Leonardo da Vinci. It is simply a case of greed masquerading as progress. For many a pleasurable year I have been a spectator and a participant at the Royal Poinciana Playhouse and I hold it very close to my heart. It has been a beacon in our midst—a light we must cherish. This beautiful little theater which has become part of our history—we must not let go." — Christopher Plummer

"1979 COVENANT AGREEMENT"

79 042635

79 MAR 13 PM 4:25

A G R E E M E N T

THIS AGREEMENT, made and entered into this 6 day of March, 1979, by and between the TOWN OF PALM BEACH (hereinafter referred to as the "Town"), and POINCIANA PROPERTIES, LTD., a Virginia Limited Partnership, authorized to do business in Florida (hereinafter referred to as "Partnership").

W I T N E S S E T H:

WHEREAS, Partnership made an application for variance No. 39-78 with respect to the property known as the Royal Poinciana Plaza on Cocoanut Row in the Town of Palm Beach located on land situate, lying and being in the Town of Palm Beach, Palm Beach County, Florida, more particularly described on the sheet attached hereto as Exhibit A; and

WHEREAS, after public notice and a public hearing on the Partnership application, the Town Council of the Town of Palm Beach granted said variance No. 39-78 with modifications of the original plan at its meeting of February 13, 1979 subject to the following conditions; and

WHEREAS, Partnership suggested and volunteered some of said conditions and by this agreement does hereby covenant and agree with TOWN that the conditions hereinafter set forth have become binding obligations on the part of Partnership, and upon its successors and assigns.

25.60

NOW, THEREFORE, know all men by these presents that in consideration of the premises hereinbefore set forth and for other

THIS INSTRUMENT WAS PREPARED BY
DELWYN L. MIDDLETON
Attorney at Law
205 NORTH AVE., PALM BEACH, FLORIDA 33480

PALM BEACH REC 3023 PAGE 380

good and valuable considerations, the parties do hereby agree as follows:

1. The granting of variance No. 39-78 is contingent upon and subject to compliance by Partnership with the following conditions, to wit:

A. Immediately upon the complete execution of this agreement, Partnership shall simultaneously execute a stipulation with the Town to dismiss the legal action against the TOWN for "Declaratory Judgment and Injunctive Relief" filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida No. 76-508-CA (L) 01 B Civil Division and thereafter stipulation shall be filed and the action shall be dismissed with prejudice.

B. Upon completion of the modified construction proposed to the Council, the buildings and the property shall conform to the requirements of the Zoning Code of TOWN except as to the number and size of non-conforming parking spaces then existing in the Royal Poinciana Plaza and the size of the spaces now existing (and to be added upon demolition of the "Slat House" and to be added as shown in "shaded blocks" on plans) which will continue to be used. No other non-conformity will be permitted.

C. Upon completion of the project, there will be over 16% of landscape open space, as defined by the Zoning Code of TOWN and determined by the Building Official. After construction is completed and certificate of occupancy is issued

PALM BEACH REC 3023 PAGE 381

there shall be no conversion of any landscaped areas to paved areas without approval of the Town.

D. All landscaping must be approved on site by Honorable Thomas Mettler, a member of the Town Council, before a certificate of occupancy is granted. In granting such approval said Town Council member will be looking for substantial conformity with both Town Ordinance requirements and with the plans submitted (and to be submitted) and on file with the Building Official. However, the parking spaces which could have been provided in the northeast corner of the property and along the perimeter roads on the east boundary of the property will be eliminated as directed by the Town Council which will add to the number of non-conforming parking spaces permitted.

E. Creation of Unity of Title to prohibit the separate conveyance of any portion of Royal Poinciana Plaza.

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

A. In the event of the demise of the historic Mysore Fig Tree, that area within the curb around the base of the tree will be maintained in its entirety as an open landscaped space.

B. There shall be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of Building B (located in the northwest corner of the Plaza) contemplated under

variance No. 39-78 herein, however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings. The compromise plan as finally granted by the Town provides for the destruction of all but approximately 2,400 sq. ft. of the easterly portion of the present "old playhouse building a/k/a Slat House" (located in the southeast corner of the Plaza) and conversion of this area to landscaped parking spaces of the same size as those now in the Plaza. The plans for renovation of the easterly portion of the present "old playhouse building a/k/a Slat House" shall be approved by the Architectural Commission of the Town of Palm Beach. Building A as proposed in the variance application shall not be constructed but shall remain as landscaped parking area.

C. It will not object to or contest by legal action any zoning which precludes further development of any nature in the Plaza and further it will not instigate or participate in legal action to repeal current zoning ordinance.

D. It will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but 10% of total square footage of said retail shops from remaining open after 6:00 p.m.

E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and

for lectures or other special events. The current Lessee has agreed that there will be only one matinee performance during the business week (Monday-Friday) beginning with July 1, 1979 through June 30, 1983. Upon entering into a new lease, i.e. after June 30, 1983, it will permit no theater matinees during the week but only on weekends. This will not preclude the use of the theater for lectures or other special events on the weekends during the remainder of the year when theater productions are not being presented.

F. It will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the "Poinciana Theater" for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.

G. It will not allege economic hardship as a basis to abrogate any of the terms of this agreement.

3. The above conditions shall be construed to be covenants and restrictions running with the land and shall be in full force and effect so long as the structure currently known as the Royal Poinciana Plaza continues to be in existence and is located upon the above-described premises. However, none of the above shall bind Partnership or any subsequent owners of the Royal Poinciana Plaza to this agreement or the current zoning ordinance if at some future date that ordinance is revised as it applies to the plaza and thereby provides for further development possibilities.

4. Upon any breach of the above covenants and conditions by Partnership or its successors and assigns, TOWN shall have all

PALM BEACH REC 3023 PAGE 384

the rights and remedies allowed by law to require strict compliance with the said covenants and conditions.

5. Under the TOP, with Sanitary Sewage Good Faith Amendment, the commercial allocation will be used in its entirety for this project and Council has approved 1500 gallons more per day to be allocated to accommodate this project.

6. This agreement shall inure to and be binding upon the successors and assigns of the parties hereto. This agreement may be changed only by written amendment executed by the TOWN and Partnership or its successors or assigns.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first aforesaid.

TOWN OF PALM BEACH

ATTESTED BY:

By: _____
George R. Frost, Town Manager

Grace T. Peters, Town Clerk

CORPORATE SEAL

APPROVED

March 6 1979

TOWN ATTORNEY

POINCIANA PROPERTIES, LTD.

By: _____ (L.S.)
General Partner

As to Partnership

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

Before me the undersigned authority personally appeared GEORGE R. FROST and GRACE T. PETERS, Town Manager and Town Clerk respectively of the Town of Palm Beach, a municipal corporation located in Palm Beach County, Florida, known to me to be the individuals described in and who executed the foregoing agreement on behalf of the Town of Palm Beach and they acknowledged before me that they executed the same for the purposes therein expressed.

Witness my hand and official seal this 6th day of March 1979.

Notary Public in and for the State and County aforesaid

My Commission Expires:

MY COMMISSION EXPIRES JAN. 2 1980
BONDED THRU GENERAL INS. UNDERWRITERS

PALM BEACH REC. 3023 PAGE 385

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

Before me the undersigned authority personally appeared JAMES COMYNS, General Partner of Poinciana Properties, Ltd., a Virginia Limited Partnership, known to me to be the individual described in and who executed the foregoing agreement, and acknowledged before me that he executed the same for the purposes herein expressed.

Witness my hand and official seal this 20th day of March, 1979.

(NOTARY SEAL)

Elise C. Peterson
Notary Public in and for the
State and County aforesaid

My Commission Expires:
Notary Public, State of Florida at Large
My Commission Expires Dec. 22, 1979
Bonded by American Fire & Casualty Co.

PALM BEACH REC OFF 3023 PAGE 386

DESCRIPTION

On the north by the southerly right-of-way line of Royal Poinciana Way; on the east by the westerly right-of-way line of Cocoanut Row; on the west by the Waters of Lake Worth; on the south by; the following described line;

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Cocoanut Row, as said streets are described in deed recorded in Deed Book 814, page 477 and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Cocoanut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of 23°-53'-30"; thence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.62 feet to the point of beginning of the herein described south line; thence westerly making an angle from south-west to west of 66°-14'-30", a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of 85°-42'-43", a distance of 97.28 feet; thence northwesterly, a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of 102°-55'-30" and is 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature, of a curve concave to the west, having a radius of 513.29 feet and a central angle of 15°-35'-22"; thence northerly along the arc of said reverse curvature, a distance of 97.62 feet to a point in a line parallel with and 461.2 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of the herein described southerly line.

Excepting, however, so much of a nearly rectangular area of land, together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing described parcel of land, and which nearly rectangular area of land has a southerly boundary of 208.44 feet, an easterly boundary of 71.2 feet, a northerly boundary of 190.74 feet plus 12.08 feet on two different courses coinciding with the south line of the "east approach of Flagler Memorial Bridge", and having a westerly boundary of 71.88 feet coinciding with the west face of an existing concrete bulkhead within the Waters of Lake Worth, and all as such nearly rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company to Town of Palm Beach, dated September 11, 1939, recorded in Deed Book 592, page 470 of the Public Records of Palm Beach County, Florida.

PALM OFF
BEACH REC 3023 PAGE 387

Record Verified
Palm Beach County, Fla.
John B. Dunkle
Clerk Circuit Court

EXHIBIT "A"

Matias, Sally

From: Adam Munder <amunder@sterlingorganization.com>
Sent: Monday, September 24, 2012 12:10 PM
To: phflynn@gmail.com
Cc: council@townofpalmbeach.com; Randolph, John C.; pelwell@townofpalmbeach.com
Subject: Response to Palm Beach Theater Guild

Patrick,

As you know, we are actively seeking to enter into a lease on commercially reasonable terms to an experienced operator who has the appropriate financial backing and a sound business plan. Unfortunately, you do not currently qualify as a potential lessee for the Playhouse. Please see our clarification of the facts below:

1. **We are not obligated by the 1979 Agreement to lease the Playhouse.**

    a. To argue that the 1979 Agreement imposes an affirmative legal obligation on the owner to operate the playhouse is simply incorrect. The 1979 Agreement is a restriction on the uses of the structure and nothing more. The Agreement does and cannot take away from the owner their property rights to decide if, to whom and on what terms they will lease that facility.

    b. The Court's November 2009 final judgment in the case between your PAC and the Town, affirmed by the Fourth DCA, underscores the fact that the 1979 Agreement imposes a restriction on use and not what you are trying to suggest. In that ruling, Judge Crow reviewed his earlier decision and stated, " Further, the Court held that the Royal Poinciana Theater, located in the Plaza, could only be operated and maintained as a theater of the performing arts and /or visual arts and for lectures or other special events and could not be used for any other purpose."□

2. **The proposal from the Palm Beach Theater Guild is not a commercially reasonable offer for the following reasons:**

    a. You are requiring the landlord to deliver the building in performance ready condition.

        i. As you know, we inherited the vacant Playhouse in April of 2008 (the last tenant having left over 8 years ago) and we have maintained the building to current code standards since that time. The Landmarks Preservation Commission verified in January 2012 that the building is in good condition and does not suffer from demolition by neglect.

        ii. You are aware (and have stated publically and on record) that **you** would need to spend a significant amount of money to enable the building to be in performance ready condition and you have not provided any consideration for this in your current proposal.

            - The Executive Summary of Palm Beach Theater Guild's business plan submitted to the Landmarks Preservation Commission in December of 2009 stated "The plan does not assume that the landlord will complete any of the improvements".

- The 2008 Palm Beach Theater Guild business plan confirmed that the Palm Beach Theater Guild will "invest $3M in capital improvements to restore theater to its original beauty".

- We believe $3 million is a start but only a fraction of the potential cost.

b. You have never been able to confirm that you have the appropriate financial backing to renovate and operate the Playhouse.

   i. You stated in your letter on August 1st, 2012 that you will sign a tenant application and submit the latest financial statements for the Palm Beach Theater Guild. We have yet to receive either document. In fact, you have requested and received our tenant application in April 2008, April 2009 and December 2009 and you have never filled out the application.

c. You have refused to provide us with your current business plan.

d. You have no experience operating a theater.

3. **Your conduct and behavior over the past 4 years has destroyed any interest on our part in entering into a contractual relationship with you.**

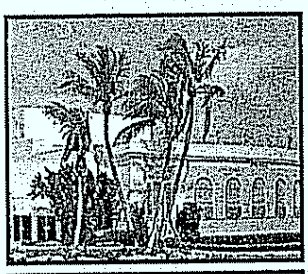
   a. You have personally disparaged my family, the Kosoy family and Sterling Palm Beach.

   b. You have led two failed referendum efforts to take away our private property rights.

   c. You have consistently mischaracterized the terms of the 1979 agreement.

Sincerely,

Adam



Palm Beach Theater Guild

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Dyanne Tosi
Angela Whittaker

Committee of Stars
Edward Albee
Elizabeth Ashley
Stockard Channing
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Tammy Grimes
Julie Harris
Sally Ann Howes
Barrie Ingham
Dina Merrill
Robert Osborne
Christopher Plummer

Officers
Patrick Henry Flynn
President
Simon Taylor
Secretary

Mr. Adam Munder
Sterling Palm Beach LLC
70 Royal Poinciana Plaza
Palm Beach, FL 33480
ELECTRONIC MAIL

CC: Mayor Coniglio and Palm Beach Town Council
RE: Offer to Lease Royal Poinciana Playhouse and Celebrity Room

September 27, 2012

Dear Mr. Munder,

Thank you for your letter of September 24, 2012. I'd like to take this opportunity to clear up a few misconceptions you have, and a few misstatements in your letter.

1.

a. The original signer of the 1979 Covenant/Agreement and the subsequent owners and lessees have taken on the full obligation of that agreement and must perform in accordance with its terms. You are wrong when you say the 1979 Agreement "is a restriction on the uses" of the Playhouse and that it takes away "property rights". The 1979 Agreement states clearly that the terms of the agreement become binding upon you, as successor.

As far as "taking" rights from you as a property owner (Lessee), Mr. Munder, you as Lessee, accepted the terms of that agreement. Those rights were "bargained away". You were paid by the town for agreeing to "continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater..." Do you understand the words "continue to lease"? It does confer an affirmative legal obligation on you. Nobody is taking any property rights from you; you have already

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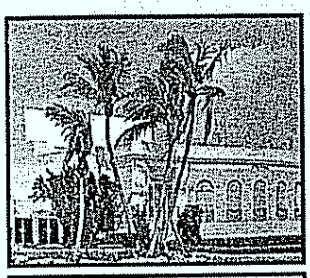
"Let me say at once, that demolishing a building that is dedicated to the Arts and the cultural enhancement of a community is tantamount to kicking a hole in a Rembrandt or a Leonardo da Vinci. It is simply a case of greed masquerading as progress. For many a pleasurable year, I have been a spectator and a performer at the Royal Poinciana Playhouse and I hold it very close to my heart. It has been a beacon in our midst—a light we must cherish. This beautiful little theatre, which has become part of our history—we must not let go."
– *Christopher Plummer*



Palm Beach Theater Guild

"Preserving the Royal Poinciana Playhouse and Plaza For All the Performing Arts"

Trustees
Patrick Henry Flynn
Dr. Elizabeth Bowden
Danielle deBenedictis
Florence E. Flynn
Ellis J. Parker
Christopher Plummer
Simon Taylor
Edward Asplundh
Pamela Pipes
Anne Marie Haymes
Carolyn Jenkins-Jaeger

Advisory Board
Marion Albergo
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agreed to lease the theater; now it is a question of price and term. You have bargained away those "property rights".

b. You are quoting the wrong opinion from Judge Crow. The language that you quote is a commentary, or *obiter dicta*, from Judge Crow when describing, in general terms, the 1979 Covenant/Agreement as it related to the question of the Charter Amendment.

There is specific language that is operative concerning the 1979 Agreement. That language, contained in the Order from Judge Crow dated July 10, 2007, says that the 1979 Agreement, "...requires that the Poinciana Theater, located in the Plaza, be maintained and operated as a theater of the performing and /or visual arts..." Note the three key words "requires", "maintained", and "operated

2.

a. Your comments that our proposal is not commercially reasonable are not in conformance with commercially accepted concepts of leasing and not in conformance with Judge Crow's Order of 2007. That order says that you are required to maintain and operate the theater. Part of Maintenance is keeping the Theater up to building and life-safety codes. No matter who you lease this building to, you are going to have to bring it up to code. So the significant money that we would spend would be on non-code related items.

b. When we last toured the building (at the request of the Town Council when they deferred hearing the Landmarking Initiative, until you could present a plan) Conkling & Lewis provided us with an estimate of $5 million dollars for the renovation of the theater building (the Playhouse and Celebrity Room). We have subsequently been advised by two very experienced developers that the cost will be closer to $6 million dollars (or $150 dollars a

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foot). We have continually asked your company to agree upon estimates for construction. There has been no acknowledgement of this request.

c. So much has happened in the seven years we have been trying to lease the property in good faith that we have been compelled to completely revamp our business plan. On the other hand, the venue is not suitable for commercial theater. The only viable tenant or purchaser – as I have previously stated— is a non-profit regional subscription theater with deep pockets in the community in order to make up an annual deficit. In other words, the corporate structure would be like that of the Kravis Center or Dramaworks. This is a key fact that you have to understand sooner or later in order to fulfill your obligations under the 1979 Covenant and Judge Crow's order.

d. We have provided more financial backing than you have required from any other tenant. How many other tenants have offered a Letter of Credit for up to a full year's rent? We have an experienced operating partner.

3. I won't respond to the personal attacks but will remind you that our referendum attempts have been to secure the property rights that you have given to the Town and its citizens in the 1979 Agreement, and we have only quoted the terms of the 1979 Agreement which you and your associates seem to believe doesn't exist; we have not mischaracterized them.

In short, Mr. Munder, we are making a good faith effort to lease and operate the Playhouse and Celebrity Room. Your actions are denying the citizens of Palm Beach a Playhouse venue that they bargained for and were provided by your predecessor for 25 years. You have provided unreasonable hurdles for every party that has attempted to lease the

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– Christopher Plummer

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Playhouse or even gain entry into the Playhouse. Your specific purpose is to allow the Playhouse to fall into disrepair and tear it down and build condominiums. If not, why haven't you made an affirmative effort to lease it. If not to our group, to somebody else? You are not a good steward of this "public facility" that you have been entrusted with managing. I ask you once again, to please get commercially realistic and maintain the theater to Town Code and either lease it out or operate it yourself.

Sincerely,

Patrick Henry Flynn
President
phflynn@gmail.com

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– Christopher Plummer

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Royal Poinciana Playhouse

Date: November 8, 2012

One Hundred and Five (105) residents of the Town have forwarded signed copies of the attached form letter. Originals of these letters are available for viewing in the Town Manager's Office.

Attachment:
Form Letter

Citizens of Palm Beach
Post Office Box 310
Palm Beach, Florida 33480

TOWN OF PALM BEACH
SEP 18 2012
Town Manager's Office

Peter Elwell, Town Manager; please forward to:

Mayor Coniglio and Members of
The Palm Beach Town Council
360 South County Road
Palm Beach, Florida 33480

August 22, 2012

Dear Mayor Coniglio and Members of the Town Council,

Palm Beach has a well-deserved world-wide reputation as an up-scale community populated with citizens who value arts and culture. Palm Beach has a great demand for fine dining, and for a theater of the performing arts. Palm Beach is also blessed with outstanding world-class facilities that can provide both water-side fine-dining, and a Playhouse in which we can showcase performing and visual arts and lectures and other special events.

The Royal Poinciana Playhouse and attached waterfront Celebrity Room is a community asset that once was the cultural center for the community. However, for the last 7 or 8 years these community assets have been closed to the public and the owners of the Royal Poinciana Plaza have not leased these buildings as they agreed when they sub-leased the Plaza. In addition, they have not "maintained and operated" these magnificent structures as required in Judge Crow's July 10, 2007 Order of the Court.

Therefore, we the undersigned, request the Town of Palm Beach, conduct a study for the purpose of re-confirming the need for this cultural venue within the Town of Palm Beach and, specifically, <u>this</u> venue located in the facilities that exist on the waterfront and within the Town of Palm Beach and that were built for that very purpose; the Poinciana Playhouse and Celebrity Room.

We would suggest that the study would determine the need and desire of the community for this cultural venue. We would further request that the Town of Palm Beach then use eminent domain to take ownership of this venue and allow the Palm Beach Recreation Department to administer these community assets and thereby provide a much needed additional cultural venue for Palm Beach citizens. This could be a revenue positive venture, much like the Town Docks, with the Playhouse being leased out to a variety of community users and professional operators and the Celebrity Room being leased out and operated by a professional restaurateur.

Mayor Coniglio and Members of the Palm Beach Town Council

We ask you to immediately embark upon a study that will determine that the Town of Palm Beach needs and wants the landmarked, historic, Royal Poinciana Playhouse and the associated *water-side dining* facility, open and operational to serve the needs of the community.

Thank you for your consideration.

Sincerely,

The undersigned Citizens of Palm Beach

Countersigned by many of our members and your friends and neighbors:

Name	Address
Lily Rovin	140 SeaSpray Ave
Lily Rovin	Palm Bch FL 33480

Palm Beach Citizens; please sign and return ASAP in the envelope provided, or in the alternative, to the address shown on the top of this letter, thank you.

PALM BEACH THEATER GUILD, INC.

MEMORANDUM

To: Mayor and Town Council of Palm Beach

Cc: Peter B. Elwell, Town Manager

From: Palm Beach Theater Guild, Inc.

Subject: Maintaining and Operating the Poinciana Playhouse as a Town Cultural Center

Date: November 8, 2012

Following years of focus on the preservation of the Poinciana Playhouse in Palm Beach, we at the Palm Beach Theater Guild would like to look forward to a further constructive phase in which the Town of Palm Beach, the owners of the Poinciana Plaza and the residents of the Town can enjoy a cultural center at the Plaza that will use the full capacities of the historic Playhouse as a vital element in the exciting cluster of theaters and cultural venues in the Palm Beaches. We believe that the Playhouse can contribute vitally, not only to the cultural identity of the Town, but also to the area's economy and well-being, as a magnet for arts and civic activities.

We are confident that the Town will pursue the vision of the Playhouse as a theater and cultural center, in no small part because that important and longstanding role for the Playhouse is clearly required by the governing March 6, 1979 Agreement between the Town and owners of the Poinciana Plaza property and is also required by a Final Judgment issued by the Circuit Court in Palm Beach County on July 10, 2007. As discussed at greater length below, the Court's 2007 Final Judgment clearly and unequivocally ordered, in plain language, that the Poinciana Playhouse is required to "be maintained and operated as a theater of the performing and/or visual arts and for lectures and other special events." The 1979 Agreement itself requires that the owners of the Plaza "continue to lease" the space as such a theater.

We look forward to attending the meeting of the Town Council scheduled for November 15, 2012, where we believe that the Council can and should take whatever further actions may be necessary to reopen the Poinciana Playhouse. The Guild has long advocated for the position of the Playhouse as a cultural center with multiple uses, in a region blessed with theaters of multiple sizes and multiple forms of drama, music, dance, motion picture and other performance arts. A Palm Beach Post article of June 23, 2005, for example, quoted Patrick Flynn and the Palm Beach Theater Guild as believing that "a six-play subscription series, occasional Ballet Florida and Palm Beach Symphony performances, a summer teen development camp and a small screening room can work" at the Playhouse.

The Poinciana Playhouse is a historic treasure that the Town Council voted to landmark in 2008, giving the theater the protection of the Town's landmark preservation ordinance. In spite of the importance of the Playhouse, not enough has been done to ensure its survival as an active theater and cultural venue, with the result that the Florida Trust for Historic Preservation in 2011 designated the Playhouse as one of the 11 most endangered historic sites in the State of Florida. We continue to believe that the Town Council can and must continue to do all it can to act as steward of the landmarked Playhouse property under the Town's landmark preservation requirements.

As we are all aware, other theaters and performing arts facilities have frequently emerged that have had very large and positive impacts on the economic and cultural life of their communities, as well as on the particular sites and surrounding neighborhoods that thrive as a result. Obvious examples are Lincoln Center, the Public Theater and the Brooklyn Academy of music in New York and the thriving Shakespeare festival in the rural town of Ashland, Oregon, all of which vindicate the promise of the civic-minded creation and development of cultural centers. Periodic cultural uses like Spoleto Festival in Charleston, and the many film and music festivals around the country, also show the economic and cultural benefits that can and will accrue to a community from such a cultural center. Arguably, the theater districts in London and Times Square in Manhattan also reflect the establishment of clusters of theaters and performance spaces of varying sizes and the enormous and positive economic development and job creation effects that such cultural clusters and multi-sized facilities can have. In addition, history sells, as a major attraction and revenue source, with limited negative impact on a community. The numerous examples of the attraction of historic locales, of course, include Shakespeare's Stratford in England and too many other locations to begin to mention. By preserving its historic Playhouse, Palm Beach can avail itself of another cultural landmark with the lure of history and culture and without intrusive or disruptive effects on the Town.

With regard to arguments that the Playhouse is not "needed" in light of smaller theaters in the area and the very large-scale Kravis Center, we believe that such views miss a crucial point. Many people in the theater and performance world would argue for the need and advantages of a cluster of theaters and venues in a region, all of varying sizes for different arts and performance events. For example, a tiny "black box" theater may be desirable if one is going to take on the most risky and difficult of theatrical productions, such as presentation of new serious dramas. However, the smaller scale and difficulties of providing a venue for such new, full-length plays do not preclude the potential for an intermediate size space that would serve other art forms, such as classical concert music, dance, opera, motion pictures and subscription seasons of dramas, musicals and other shows. We note, as just one recent example, that Stanford University recently chose to create an approximately 670 seat theater on its campus, which will be used for multiple purposes and performances. It is clear that the Playhouse can fill in a missing piece in the cluster of cultural venues that can serve and benefit the Town and the region.

We must also address in this memorandum the clear legal requirements for maintaining and operating the Playhouse "as a theater" and cultural venue in Palm Beach. The obligation of the owners of the Poinciana Plaza to maintain and operate the Playhouse as a theater for performing and/or visual arts (such as film) is clear. This is the case both under the binding 1979

Agreement and ordinance that governs the Playhouse and in the Final Judgment issued by the Circuit Court on July 10, 2007. That Final Judgment very clearly confirms that the obligation to maintain and operate the Playhouse "as a theater" is already in place.

In its July 2007 Final Judgment, the Circuit Court unequivocally "ordered and adjudged" that:

> "it is CONSIDERED, ORDERED AND ADJUDGED as follows:
>
> "1. The terms, conditions, covenants and restrictions set forth in the 1979 Agreement, as well as subsequent amendments thereto, are in full force and effect and binding upon Plaintiff.
>
> "2. The 1979 Agreement, in paragraph 2E and F specifically, requires that the Poinciana Theater, located in the Plaza, be maintained and operated as a theater of the performing and/or visual arts and for lectures and other special events, and prohibits its use for any other purpose.
>
> "3. Plaintiff, as successor and assignee to the 1979 Agreement, does not have the right to demolish the Poinciana Theater." (emphasis added)

These clear and simple orders of the Court are not statements that can be viewed as background observations by the Court or non-binding dicta that do not require immediate action. They were, rather, contained in the Judge's mandatory, binding orders and judgments. They simply, clearly and mandatorily settled the question that the Playhouse is legally required to be "maintained and operated as a theater." (The Court pointed out in the background findings of fact in the 2007 Final Judgment that the court case arose when the owners of the Plaza sued the Town of Palm Beach in an attempt to argue that the 1979 Agreement was terminated because the applicable zoning ordinance had been revised and thereby provided "further development possibilities." The Court rejected that argument. The Court's explanation of how the case arose does not curtail the clear language of its Final Judgment directing that the Playhouse be maintained and operated as a theater.)

The March 6, 1979 Agreement that governs the Poinciana Plaza is also just as clear as the Court's Final Judgment in requiring continued use of the theater. The 1979 Agreement provided for both an affirmative obligation to "continue to lease" the Playhouse "as a theater" and for a negative prohibition that was required in any contract of sale "whereby the purchaser agrees to prohibit use of the 'Poinciana Theater' for any purpose other than as set forth...", that is, any purpose other than "for use as a theater of the performing and/or visual arts." The relevant language of the 1979 Agreement, as quoted by the Court in its Final Judgment, states the following obligations of the Plaza owners' "Partnership":

> "2E. [The Partnership, its successors and assigns] will continue to lease the space now occupied and used by the 'Poinciana Theater' only for use as a theater of the performing and/or visual arts and for lectures or other special events....
>
> "2F. [The Partnership, its successors and assigns] will include a restrictive clause in any contract of sale of the Plaza whereby the purchaser agrees to prohibit use of the

'Poinciana Theater' for any purpose other than as set forth in paragraph E above and that said restriction shall be contained in the deed of conveyance to purchaser.

"2G. [The Partnership, its successors and assigns] will not allege economic hardship as a basis to abrogate any of the terms of this agreement."

The original 1979 Agreement also provided in its paragraph 4:

"4. Upon any breach of the above covenants and conditions by Partnership or its successors and assigns, TOWN shall have all the rights and remedies allowed by law to require strict compliance with the said covenants and conditions."

The language of the 1979 Agreement and the Court's Final Judgment interpreting it in 2007 could not be more clear and simple: The Owners are required to "continue to lease" the Playhouse only "for use as a theater"; they are required to "maintain and operate" the Playhouse "as a theater;" and the Owners do not have the right to demolish the Poinciana Playhouse Theater.

The 1979 Agreement and the Final Judgment also contain language elaborating specifically on the required use of the Playhouse "as a theater." The Final Judgment ordered that the Poinciana Playhouse Theater be maintained and operated "as a theater of the performing and/or visual arts and for lectures or other special events." The quoted language also appears in the paragraph of the 1979 Agreement that requires the Owners to "continue to lease" the space occupied by the Poinciana Playhouse Theater "for use as a theater." Under these plainly stated requirements, "visual arts" like motion picture festivals, premieres or series could comply with the law, since they would present the "visual arts" in the format and context of a "theater." A passive art exhibit alone at the Poinciana Playhouse would obviously not meet the requirement for use of the Playhouse "as a theater."

For decades, the Town of Palm Beach showed its intent and understanding in regard to keeping the Playhouse in operation in accord with the 1979 Agreement. As the Court pointed out in its Final Judgment, the 1979 Agreement was amended approximately 17 times from 1980 through 2001 in order to incorporate permission for continuation of matinee performances at the Theater, without the Plaza owners ever challenging the Town's understanding that the 1979 Agreement required continued leasing of the Playhouse as a Theater. The amendments indicate the Town's intent that the 1979 Agreement had to be amended to change even the scheduling of Theater operations and that the Agreement's obligations could not simply be ignored or abrogated. Also indicative of the Town's understanding of the 1979 Agreement are such records as a May 18, 2005 letter from the attorney for the Town of Palm Beach to one of the Plaza owners (Sidney Spiegel, said to be a "trustee"), which is attached to this Memorandum as an Exhibit. In that 2005 letter, the Town attorney stated that "it has been called to the attention of the Town that Poinciana Properties is refusing access to the space known as the 'Poinciana Theater' located on the premises of the Royal Poinciana Plaza to those who wish to assess the potential for the continued operation of the theater." The Town Attorney's letter continues unambiguously:

> "As you are aware the 1979 Agreement between the Town and Poinciana Properties LTD. provides that there is a continuing obligation to lease this space for use as a theater of the performing and/or visual arts and for lectures or other special events. It is the position of the Town that the failure to make a good faith effort to continue the operation of the theater by allowing this group or other interested groups to evaluate the theater for purposes of investigating its continued use as a theater constitutes a violation of the agreement."
>
> "The Town understands that this is private property, but is mindful of the obligation, pursuant to the agreement between the Town and Poinciana Properties, to continue the theater operation."

This understanding of the Town of the obligations of the Owners under the 1979 Agreement has persisted for about four decades. For reasons that are not entirely clear to us, in 2009 some legal memoranda were presented to the Town Council that addressed possible legal approaches that might be "alternatives" that could allow the 1979 Agreement to be amended or terminated, thereby permitting demolition of the Playhouse. In one such memorandum from the Town attorney dated March 3, 2009, there appears a discussion of an "alternative interpretation" of the 1979 Agreement. Rather than viewing the Agreement as "mandatorily and affirmatively" requiring the property owners "to lease and maintain the property as a theater for the performing and/or visual arts" – as the 2007 Final Judgment required – instead a second, "alternative interpretation" was purported to exist. That speculative alternative, it was said, "would provide that the building, when it is used for any purpose, is required to be used and maintained only as a theater of the performing arts and other stated uses, but places no prohibition on the property remaining vacant." This permanent vacancy option would fly in the face of the clear and plain language of the 1979 agreement and the 2007 Final Judgment. There is no support in the Agreement, in the Court's binding 2007 orders in its Final Judgment or in other relevant history for this entirely unreasonable reinterpretation of the 1979 Agreement and the obligations of the Owners. As the Court's Final Judgment pointed out, if any further interpretation of the Agreement is required to be undertaken, beyond its plain language, then that interpretation must be reasonable. By no light of fact or stretch of interpretation could it be reasonable to believe that the Town Council in 1979 bargained with the Plaza Owners and gave them the option to either maintain the Playhouse as a theater or to leave it as a vacant and abandoned relic at one of the main entries to the Town of Palm Beach. No responsible Town Council in 1979 would have concluded that such an option to have a large, permanently vacant building in a crucial site should even be considered as part of the bargain with the Owners to allow the variances and benefits they requested. Such a permanent vacancy option would also be entirely inconsistent with the Town's having landmarked the Playhouse in 2008, which should make the Town Council and government active stewards of the protection of the theater.

We do not believe that it should be necessary to dwell on or to uncover all of the reasons why full enforcement of the obligations of the Plaza owners has not yet been achieved. Instead, we look forward to a constructive period going forward in which the 1979 Agreement and the 2007 Final Judgment are fully implemented and the Playhouse returns to its vital place as a cultural center for the Town.

We also believe that further lawsuits and litigation by the Town to interpret the 1979 Agreement and the 2007 Final Judgment should not be necessary at this time. The July 2007 Final Judgment articulates clearly the meaning of the 1979 Agreement and the obligations of the Plaza owners to "maintain and operate" the Poinciana Playhouse "as a theater." If the Town were to sue and bring an unnecessary lawsuit to ask a court to state again what was stated and ordered in 2007, there would be no controlling the time or cost of such litigation. We have seen estimates from attorneys involved with Poinciana Plaza that the lawsuit started by the Plaza owners in June 2005 cost the Town $230,000 for the more than two years of litigation that ensued before the Town achieved the clear and plain orders of the 2007 Final Judgment. A lawsuit by the Town at this juncture, and the inevitable discovery of information and documents and other proceedings that would ensue, will achieve primarily one purpose: to give the Plaza owners the benefit of further delays and inaction to avoid maintaining and operating the Playhouse "as a theater." A vote for a lawsuit, we fear, is a vote for delay.

We believe that the Town and the Plaza owners should move forward with a constructive and cooperative set of actions that will give the Town the cultural center at the Plaza that it has intended and that it deserves. As a consequence, we urge that the Town Council vote to take all steps necessary to enforce the 1979 Agreement and the 2007 Final Judgment. Such reaffirmation of the responsible course long favored by the Town will create the right imperatives and incentives for the owners to maintain a cultural center in Palm Beach.

PALM BEACH THEATER GUILD, INC.

By_____
Patrick Henry Flynn

FOSTER
JOHNSTON
& STUBBS, P.A.
Attorneys and Counselors

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505 South Flagler Drive
West Palm Beach, Florida 33401
Telephone (561) 659-3000

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Post Office Box 3475
West Palm Beach, Florida 33402-3475

John C. Randolph, Esquire
Direct Dial: 561-650-0458
Direct Fax: 561-650-0485
E-Mail: jrandolph@jones-foster.com

FYI
PC
PC
TF
PF

May 18, 2005

Mr. Sidney Spiegel
Poinciana Management, Inc.
50 Cocoanut Row, Suite 212
Palm Beach, Florida 33480

Re: Town of Palm Beach
Poinciana Theater
Our File No. 13156.8

Dear Mr. Spiegel:

As attorney for the Town of Palm Beach, I have been requested to contact you in regard to the following. It has been called to the attention of the Town that Poinciana Properties is refusing access to the space known as the "Poinciana Theater" located on the premises of the Royal Poinciana Plaza to those who wish to assess the potential for the continued operation of the theater. Specifically, the Town is advised that a group of individuals which includes Frank Sugrue who, the Town is advised has had over thirty years experience as a former theater owner and operator, has been attempting to have access to the theater so as to evaluate the property for use as a theater

As you are aware the 1979 Agreement between the Town and Poinciana Properties LTD. provides that there is a continuing obligation to lease this space for use as a theater of the performing and/or visual arts and for lectures or other special events. It is the position of the Town that the failure to make a good faith effort to continue the operation of the theater by allowing this group or other interested groups to evaluate the theater for purposes of investigating its continued use as a theater constitutes a violation of the agreement.

The Town understands that this is private property, but is mindful of the obligation, pursuant to the agreement between the Town and Poinciana Properties, to continue the theater operation. Therefore, the Town must insist that you make the theater property accessible to those who have a legitimate interest in viewing the property in order to assess its viability for continuation as a theater.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

John C. Randolph

John C. Randolph
JCR/ssm
cc: Peter B. Elwell, Town Manager

SIGNED IN THE ABSENCE OF JOHN C. RANDOLPH TO EXPEDITE DELIVERY

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Post Hurricane Sandy Status Report.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 1, 2012, from H. Paul Brazil, P.E., Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Response to Hurricane Sandy

Date: November 1, 2012

STAFF RECOMMENDATION

Town staff recommends that the Town Council affirm the emergency action taken by the Town Manager to authorize the post storm survey work. Staff does not recommend authorizing a dune construction project at this time.

GENERAL INFORMATION

Status Report

On Friday, October 26, 2012, Hurricane Sandy passed 200 miles to the east of the Town of Palm Beach shoreline. Initial shoreline impacts included lowering of the beach berm and losses to the seaward face of the dunes. Following the storm, for a period lasting more than three days, the Town's shoreline experienced strong nor'easter conditions. The large waves from the northeast, coupled with extreme high tide conditions that are normal for this time of year, caused extensive Town-wide erosion to the beaches and dunes.

The following is a list of preliminary observations:

- The utility lines leading to the Sand Transfer plant have been damaged. The plant has been inundated and is not operational. We are currently evaluating the extent of the damage.
- We observed only minimal impacts in Reach 1 due to the southern jetty.
- The beaches have receded in Reaches 2 and 3. In some areas we have lost all dry sand and waves are breaking on the existing seawalls. The Town owned North Ocean Boulevard seawall immediately east of the Palm Beach Country Club appears to be in good condition. The revetment placed at the toe of the wall has protected it. This wall is scheduled to be replaced in the next two to three years.
- The privately owned seawall immediately south of the Beach Club failed. The Beach Club's seawall has been compromised. Both properties have lost an appreciable amount of sand. The FDEP has issued a field permit for temporary restoration and a permit for

permanent replacement of the wall is anticipated to be issued in the near future.

- The sand that had built up between The Breakers groins and their seawall has eroded.
- The Midtown Beach has eroded but the majority of the dunes are intact. The dunes have been impacted at the southern end of the project. A sand bar has developed immediately off shore and some recovery is expected in this area.
- Reach 5 has been impacted but appears to be in relatively good condition.
- Reach 6 has been impacted but the FDOT revetment continues to protect the roadway and upland property.
- The north end of Reach 7 has substantial losses. Phipps Park was closed immediately after the storm. Access stairs for both the public and the lifeguards have been damaged. Staff is proceeding with repairs. Significant losses were noted between Sloan's Curve and the Lake Worth Pier. The beach has reopened.
- Reach 8 south of the Lake Worth Pier has significant impacts. The beach has lowered and the dune has been impacted.
- Both public and private beach access stairs have been damaged Town-wide.

Some recovery is expected within nourished areas and immediately south of project areas. We have seen this before. However, it is not possible to predict the magnitude of this recovery. The Town's overall level of storm protection has likely been reduced.

Town staff documented shoreline conditions immediately before, during, and after shoreline effects from Hurricane Sandy. Town staff provided preliminary storm damage information to Palm Beach County and FDEP to support a request for Federal assistance. Governor Scott has made that request.

Sand Transfer Plant

The plant's main pump is electrical. The service line runs near the jetty cap. The line was undermined and severed during the storm. The plant also has an emergency generator that powers a small pump to dewater the building if it becomes inundated. The pump is water cooled. The water service runs parallel to the electric service and it was damaged as well. We have retained an engineering consultant to evaluate the damage, develop repair alternatives, recommend service line improvements, and provide construction cost estimates. Staff anticipates presenting this information at the December 11 Town Council meeting.

The U. S. Army Corps of Engineers is scheduled to begin excavation of an expanded settling basin immediately east of the sand transfer plant in January 2013. This material as well as dredge material from the inlet will be placed on the dry beach or in shallow water in Reaches 1 and 2. This will minimize the negative impact of the plant being off line for repairs.

Dune Restoration

On October 31, 2012, the Florida Department of Environmental Protection issued an Emergency Final Order (EFO) for ten (10) counties on the east coast of Florida, which includes Palm Beach County. The emergency order will expire on December 28, 2012. This allows local

governments to pursue appropriate measures in response to the storm. One activity that is allowed to be performed by local governments is dune restoration. In other areas of Palm Beach County (PBC), such as Coral Cove and Lantana, PBC Environmental Resources Management is moving forward with post-storm dune restoration.

To calculate the losses due to a storm, pre and post storm surveys are needed. In August/September 2012, the Town's consultant, Applied Technology & Management, Inc. (ATM) completed the annual physical monitoring surveys for the Town. These will be used for the pre-storm survey. Under the Town's emergency purchasing procedures, the Town Manager has approved an expenditure of $38,480 and a contract with ATM to conduct a Town-wide post-storm survey. This data will be required if FEMA funds become available for beach and dune restoration.

In late 2010 and early 2011, a partial beach nourishment and dune restoration project was constructed in Mid-Town (Reach 4) and Phipps Ocean Park (Sloan's Curve to Ambassador Hotel in Reach 7 and Reach 8 south of the Lake Worth Pier to the southern Town limits). The total volume placed was 133,000 cubic yards. The project cost was approximately $4.9 million. Due to Federal reimbursement of $3.3 million, the net cost to the Town was approximately $1.6 million. Visual assessments by Town staff have observed that most of the sand remaining from 2010/2011 has been removed from the dry beach by the recent storm. In some areas, erosion from the storm has exceeded the sand placed in 2010/2011.

Typical post-storm FEMA endorsed dune restoration projects are constructed with a density of 5 to 10 cubic yards per linear foot of beach. Considering the entire engineered beach sections in Town (Wells Road to Breakers, Clarke Avenue to El Vedado, Sloan's Curve to Kreusler Park, and the Bellaria condominium to the south Town limits) the linear distance is 27,800 feet. Using 5 cubic yards/linear foot, we estimate the placement of approximately 139,000 cubic yards of truck hauled sand. The estimated cost of placing 139,000 cubic yards would be approximately $5.4 million. The level of FEMA reimbursement, if any, is not known at this time.

Staff has taken some preliminary steps to position the Town to respond quickly if necessary. The Town Manager has authorized the post storm survey. Public Works and Purchasing staff have met with the contractor that successfully completed the 2010/2011 truck haul project and confirmed that they will honor the previously bid unit rates. Sand is available from the same source used for the past project. It would be necessary for the Town Council to waive our purchasing requirements to hire this contractor on an emergency basis.

Staff does not recommend moving forward with a dune project at this time. As previously mentioned, the potential for FEMA reimbursement is not known. Also, the extent of natural recovery is not known. No structures within the project areas are in imminent danger. We have the opportunity to pursue a dune project in the future with or without the emergency order. If it does become necessary to complete a project on an emergency basis, a special Town Council meeting can be called and Town purchasing policies can be waived at that time if conditions warrant.

FUNDING/FISCAL IMPACT

There is no fiscal impact associated with this item unless the Town Council chooses to move forward with a project. The cost of a dune construction project is anticipated to be on the order of $5,400,000

PURCHASING REVIEW

The Purchasing Division has determined that the results from the competitive bid process for the project in 2010/2011 could be used for an emergency dune restoration project.

cc: Jane Struder, Director of Finance
Robert Weber, Coastal Coordinator

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Request for a Construction Hours Waiver for USACE's Lake Worth Inlet Maintenance Dredging Project.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated October 31, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Undated Letter from Lynn Nietfeld, Great Lakes Dredge and Dock

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Request for Waiver to Town Code for Construction Hours,
USACE Lake Worth Inlet Maintenance Dredging Project

Date: October 31, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the United States Army Corps of Engineers (USACE), their contractor Great Lakes Dredge & Dock Company, LLC (GLDD), and any GLDD subcontractor to perform construction related services outside of the Town Code of Ordinances restrictions for construction dates, hours, and noise levels. A copy of the letter of request received from GLDD is attached.

GENERAL INFORMATION

The Corps will soon begin its annual dredging of the Palm Beach Inlet Channel. On January 12, 2013, GLDD, (the USACE contractor) will begin mobilizing to dredge the Lake Worth Inlet and the recently permitted expanded settling basin, with actual dredging activity expected to begin on or about January 29, 2013. The Project includes dry beach placement at no cost to the Town. Sand will be placed according to the State permitted template in Reach 1 and the northernmost section of Reach 2. Additional sand will be placed in the nearshore, immediately below the Mean Low Water line, along Reach 1 and the northernmost section of Reach 2.

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).
>
> Section 42-199 – prohibits work between 5:00pm and 8:00am.
>
> Sections 42-226 through 229 – regulates noise, equipment operation, and work hours and the standard Town requirement to "stand down for the season".

To summarize, Town staff requests that the USACE, its contractor, and related subcontractors, be allowed to perform construction services 24 hours/day 7 days/week. This is the same relief that

has been provided for prior inlet dredging events and for Town-sponsored beach nourishment projects.

The following estimated schedule (subject to change) has been provided by GLDD:

Mobilization. Activities will be conducted 12 hours a day, 7 days a week

Waterside Equipment and Pipelines – January 12 to January 27
Survey Vessel – January 12
Beach Equipment and Shore Pipe – January 22 to January 27
Dredge Texas – January 28

Dredging. Activities will be conducted 24 hours a day, 7 days a week

Entrance Channel & Existing Settling Basin – January 29 to February 4
Expanded Settling Basin – February 4 to February 17
Northern Turning Basin – February 17 to February 20

Demobilization. Activities will be conducted 12 hours a day, 7 days a week

Waterside Equipment and Pipelines – February 20 to March 6
Beach Equipment and Shore Pipe – February 21 to February 26
Dredge Texas – February 21
Survey Vessel – March 6

FUNDING/FISCAL IMPACT

This project is being funded 100% by the USACE for the dry beach and nearshore placement of approximately 280,000 cubic yards of sand. The Town and the USACE have an agreement in place for the Town to assume the responsibility of post-construction monitoring, including sea turtle nesting monitoring, and escarpment removal. Town funding for the post-construction activities is contained within the FY 2013 Coastal Management Program Budget.

RW

Attachment

cc. Thomas G. Bradford, Deputy Town Manager
Kirk Blouin, Director of Public Safety
Robert Weber, Coastal Coordinator
Lynn Nietfeld, Project Sponsor, Great Lakes Dredge & Dock Company, LLC

Great Lakes Dredge & Dock Company, LLC

2122 York Road
Oak Brook, Ilinois 60523
630 574.3000

Town of Palm Beach
Public Works Department
Post Office Box 2029
Palm Beach, Florida 33480

Attention: Robert Weber, Coastal Coordinator

Reference: Contract No. W912EP-12-C-0029
Palm Beach Harbor, Maintenance Dredging, 33-Foot Project & Expansion of Existing Settling Basin
Palm Beach County, Florida

Subject: Request for Variance to allow 24-hours/day, 7-days/week Operations

Mr. Weber·

As you are aware, Great Lakes Dredge & Dock Company (Great Lakes) will be performing work on the above mentioned project for the U.S. Army Corps of Engineers. During the performance of this work, Great Lakes plans to operate our marine and shore-based equipment 24-hours/day, 7-days/week. Per previous discussions for the Project, Great Lakes requests a variance for the Town of Palm Beach to allow our crews to operate on this 24/7 schedule.

All Great Lakes areas will be properly lighted and marked to make the public aware of our operations. Operational areas will be manned at all times to assure public security as well as safety.

Please do not hesitate to contact me if you have any questions or comments, or if you require additional information at (630) 574-3018 or via email at LNietfeld@gldd.com.

Regards,
Great Lakes Dredge & Dock Company

Lynn Nietfeld
Project Sponsor

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Transfer of FY12 Surplus to the Coastal Protection Fund.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated November 2, 2012, from Jane Struder, Finance Director

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: Transfer of the FY12 Surplus to the Coastal Protection Fund

Date: November 2, 2012

STAFF RECOMMENDATION

Staff is seeking guidance from the Town Council regarding the one-time use of the FY12 estimated surplus for coastal protection projects.

GENERAL INFORMATION

At the October 9, 2012, Town Council meeting, Town Council President David Rosow requested a discussion item for the November 15, 2012, Town Council meeting regarding using the FY12 surplus for Coastal Protection Projects. Staff was directed to return in November with information regarding the estimated General Fund surplus and a recommendation regarding reallocating the surplus to the Coastal Protection Program.

General Fund Surplus

Preliminary estimates indicate that the FY12 year-end surplus will be approximately $2 million. This amount includes insurance proceeds of $391,561 received for losses caused from the Steve White case, $102,940 we recently received from the Florida Attorney General for a settlement of anti-trust violations against Arthur J. Gallagher when they were the Town's insurance broker, and $207,887 that is directly related to the increase in parking ticket fines. (When the Town Council approved the parking ticket fine increase, you directed that the additional revenues be used for the Coastal Protection Program.) The balance of $1,297,612 represents the surplus from higher than expected revenues and expenditure budget savings achieved by the Town departments during the year.

At the end of FY11, the unassigned General Fund – Fund Balance was $18,155,941. The General Fund Reserve Policy requires a minimum reserve of 25% of operating expenditures. This minimum amount is $14,927,820, leaving an "excess" reserve of $3,228,121. A portion of this "excess" may be available to be transferred to the Coastal Protection Fund. During the FY14 budget process, we plan to present a recommendation for an additional transfer from General Fund - Fund Balance to the Coastal Protection Fund.

Coastal Protection Program
Preliminary estimates for the Coastal Protection Fund indicate a projected Fund Balance as of September 30, 2012, of $10,100,000. Of this amount, $6,063,000 has been committed for various coastal projects. For FY13, a transfer of $2,738,914 to the Coastal Protection Fund from the General Fund has been appropriated and $869,000 has been budgeted in the Coastal Protection Fund for projects leaving an uncommitted fund balance of $5,906,914 available for future projects. This amount, plus the FY12 General Fund surplus discussed above, would result in an uncommitted Coastal Protection Fund balance of $7,906,914.

If the Town Council approves the transfer of the FY12 General Fund surplus ($2 million) to the Coastal Protection Program, staff will prepare and present a budget amendment Ordinance at the December 11, 2012, Town Council meeting to implement the transfer.

jls

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Florida Inland Navigation District (F.I.N.D.) Grant for Dredging Project in Lake Worth.

a. RESOLUTION NO. 152-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a State Grant Agreement with the Florida Inland Navigation District for the Town of Palm Beach for Phase I of the Town of Palm Beach Waterway Project in the Lake Worth Lagoon and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated October 31, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 152-2012
- FIND Agreement

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Authorization to Execute a Florida Inland Navigation District Grant Agreement
Resolution No. 152-2012

Date: October 31, 2012

STAFF RECOMMENDATION

Town staff recommends that Town Council approve Resolution No. 152-2012 and authorize the Mayor to execute a grant agreement (PB-PB-12-164) with the Florida Inland Navigation District (FIND) for Phase I (Field Surveys, Engineering and Design, and Permitting) of the Town of Palm Beach Waterway Project.

GENERAL INFORMATION

At the January 10, 2012, Town Council meeting, Town Council President Pro Tem Wildrick expressed concerns regarding a reduction in navigation within the eastern portion of the Lake Worth Lagoon, emphasizing a section between Southern Boulevard and Everglades Island. A request was made for Town staff to review the matter and consider options to restore navigation accessibility.

Mayor Gail Coniglio reached out to the Florida Inland Navigation District (FIND) for assistance in identifying potential actions to correct navigable restrictions and possible funding participation. A letter was submitted to FIND Commissioner Donn Colee (representing Palm Beach County) on February 15, 2012.

On March 26, 2012, FIND staff contacted Town staff and recommended that the Town submit a Waterway Assistance Grant application. On March 30, 2012, Commissioner Colee initialed the Town's application form acknowledging review of the conceptual project.

On April 10, 2012, Town Council approved the development of a Lake Worth Lagoon Dredging Project and preparation of a grant request for FIND participation. An application was submitted by the Town to FIND before the June 1, 2012 deadline.

On October 8, 2012, FIND provided a letter to Town staff indicating that the District would contribute up to fifty percent (50%) of the overall Phase I project costs and their participation shall not exceed $40,000. The agreement, PB-PB-12-164, to be considered by Town Council, indicates that the Phase I portion of the project must be completed by September 1, 2014. In order to have a FIND application for Phase II (construction) prepared for FIND's FY 2013-2014 funding considerations, the Phase I activities are to be completed prior to the anticipated May 31, 2013 application deadline.

Should Town Council approve Resolution No. 152-2012, our consultant will complete Phase I in time for FIND commissioners to consider future financial participation in the construction phase of this project.

Conceptual cost estimates, which will be refined during Phase I activities, suggest that the construction cost will be on the order of $1.5 to $2 million. Please note that these are very preliminary estimates.

FUNDING/FISCAL IMPACT

Accepting this grant obligates the Town to funding Phase I of this project and then seeking reimbursement for FIND's cost share.

Neither Phase I (Field Investigation, Engineering and Design, and Permitting), nor Phase II (Construction) of the Lake Worth Lagoon Dredging project, are currently included in the Town's budget or Long Term Financial Plan. Phase I professional services are anticipated to cost approximately $84,000. These services will be authorized in a separate resolution presented at the November 15 Town Council meeting. If you authorize staff to move forward, Town Council action on this item should include appropriation of $84,000 from the General Fund Contingency account.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

The resolutions for this item are standard forms that have been previously reviewed and approved by the Town Attorney. In addition, the Town Attorney has reviewed the FIND contract and approved it for legal form and sufficiency.

RW

Attachments

cc: Jane Struder, Director of Finance
Robert Weber, Coastal Coordinator

RESOLUTION NO. 152-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A STATE GRANT AGREEMENT WITH THE FLORIDA INLAND NAVIGATION DISTRICT FOR THE TOWN OF PALM BEACH FOR PHASE I OF THE TOWN OF PALM BEACH WATERWAY PROJECT IN THE LAKE WORTH LAGOON 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 Florida Inland Navigation District's Board of Governors has awarded a maximum grant of $40,000 to the Town of Palm Beach for Phase I of the Town of Palm Beach Waterway Project in The Lake Worth Lagoon.

Section 2. The Town Council of the Town of Palm Beach hereby authorizes the Town Manager to execute the project agreement and related documents.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

FLORIDA INLAND NAVIGATION DISTRICT

COMMISSIONERS

DONN R. COLEE, JR.
CHAIR
PALM BEACH COUNTY

GAIL KAVANAGH
VICE-CHAIR
ST. LUCIE COUNTY

E. TYLER CHAPPELL
TREASURER
BROWARD COUNTY

J. CARL BLOW
SECRETARY
ST. JOHNS COUNTY

BRUCE D. BARKETT
INDIAN RIVER COUNTY

AARON L. BOWMAN
DUVAL COUNTY

S. NORMAN BRAY
NASSAU COUNTY

T. SPENCER CROWLEY, III
MIAMI-DADE COUNTY

DONALD J. CUOZZO
MARTIN COUNTY

NANCY J. FREEMAN
VOLUSIA COUNTY

JONATHAN S. NETTS
FLAGLER COUNTY

JERRY H. SANSOM
BREVARD COUNTY

DAVID K. ROACH
EXECUTIVE DIRECTOR

MARK T. CROSLEY
ASSISTANT EXECUTIVE DIRECTOR

October 08, 2012

RECEIVED
OCT 11 2012
TOWN OF PALM BEACH
PUBLIC WORKS DEPARTMENT

Mr. Robert Weber
Coastal Coordinator
Public Works
Town of Palm Beach
951 Old Okeechobee Road, Suite A
West Palm Beach, FL 33434

RE: Town of Palm Beach Waterway – Phase I
Project # PB-PB-12-164

Dear Mr. Weber:

Enclosed for signature are two original project agreements for your approved Waterways Assistance Program project for fiscal year 2012-2013. Once they have been executed, please return **both** originals to me for execution by the District. When returning the agreements, you **MUST include an executed Exhibit C, Matching Funds Form**. DO NOT SEPARATE THE ATTACHMENTS FROM THE AGREEMENT. Incomplete agreements will not be executed.

I will return one fully executed complete original agreement to you for your files. Please be sure to refer to the listed project number in all future correspondence and communication regarding this project. Should you have any questions please contact me.

Sincerely,

Mark Crosley
Assistant Executive Director

ADMINISTRATIVE OFFICE ON THE INTRACOASTAL WATERWAY IN PALM BEACH COUNTY
1314 MARCINSKI ROAD, JUPITER, FLORIDA 33477-9427 TELEPHONE 561-627-3386 FAX No. 561-624-6480
www.aicw.org

FLORIDA INLAND NAVIGATION DISTRICT
PROJECT AGREEMENT

PROJECT NO. PB-PB-12-164

This PROJECT AGREEMENT made and entered into this _____ day of _____, 20____ by and between the Florida Inland Navigation District (hereinafter the "DISTRICT"), and the Town of Palm Beach, (hereinafter the "PROJECT SPONSOR").

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT** - Subject to the provisions of this Agreement and Rule 66B-2 of the Florida Administrative Code (Exhibit "B"), the DISTRICT has determined to provide assistance funding to the PROJECT SPONSOR in furtherance of an approved project ("PROJECT") consisting of the Town of Palm Beach Waterway – Phase I. Said project is more specifically described in the PROJECT SPONSOR'S Waterways Assistance Application, which is on file at DISTRICT headquarters.

Any modifications to the PROJECT'S scope of work shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

2. **TERM** - The PROJECT SPONSOR shall not commence work on the PROJECT prior to the execution of this Agreement unless specifically authorized by the DISTRICT Board and **shall complete the PROJECT and submit all required payment reimbursement information on or before September 1, 2014,** unless the PROJECT period has been extended with the prior written approval of the DISTRICT. In no event other than a declared state of emergency that affects the project completion shall the PROJECT period extend beyond three (3) years from October 1, 2012. The PROJECT SPONSOR acknowledges this is the only provision to carry over the DISTRICT assistance funding under this Agreement beyond September 30, 2015, and that any extension of funding beyond this date shall be at the sole discretion of the DISTRICT.

Any request for extension of funding beyond the dates set forth in the preceding paragraph shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than 60 days prior to the original project agreement expiration. This request will then be considered by the DISTRICT Board, whose decision shall be final.

3. **ASSISTANCE AMOUNT** - The DISTRICT shall contribute no more than Fifty percent (50%) of the PROJECT SPONSOR'S out-of-pocket costs for completion of this PROJECT ("PROJECT AMOUNT"). Payment of funds by the DISTRICT to the PROJECT SPONSOR (the "ASSISTANCE AMOUNT") will be on a reimbursement basis only, and only for those authorized PROJECT COSTS as shown in Exhibit A and meeting the requirements of Paragraph 5 below and shall not, in any event, exceed $40,000.00.

Any modifications to the PROJECT'S Cost Estimate (Exhibit A) shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

4. **MATCHING FUNDS** - The PROJECT SPONSOR warrants and represents that it has the PROJECT SPONSOR Match Amount (the PROJECT AMOUNT less the ASSISTANCE AMOUNT) available for the completion of the PROJECT and shall, prior to the execution of this Agreement, have provided the DISTRICT with suitable evidence of the availability of such funds using DISTRICT Form #95-01 (Exhibit C), and including upon request, providing the DISTRICT with access to applicable books and records, financial statements, and bank statements.

5. **PROJECT COSTS** - To be eligible for reimbursement under the Project Agreement, PROJECT COSTS must be necessary and reasonable for the effective and efficient accomplishment of the PROJECT and must be directly allocable thereto. PROJECT COSTS are generally described in Exhibit A. PROJECT COSTS must be incurred and work performed within the PROJECT period, with the exception of pre-agreement costs, if any, consistent with Paragraph 6 below, which are also eligible for reimbursement by the DISTRICT.

6. **PRE-AGREEMENT COSTS** - The DISTRICT and the PROJECT SPONSOR fully understand and agree that there shall be no reimbursement of funds by the DISTRICT for any obligation or expenditure made prior to the execution of this Project Agreement unless previously delineated in Exhibit A, consistent with Exhibit B, and previously approved by the DISTRICT Board during the grant review process.

7. **REIMBURSEMENT PROCEDURES** - PROJECT COSTS shall be reported to the DISTRICT and summarized on the Payment Reimbursement Request Form (Form #90-14) attached as Exhibit D. Supporting documentation including bills and canceled payment vouchers for expenditures shall be provided to the DISTRICT by the PROJECT SPONSOR or LIAISON AGENT with any payment request. All records in support of the PROJECT COSTS included in

payment requests shall be subject to review and approval by the DISTRICT or by an auditor selected by the DISTRICT. Audit expenses shall be borne by the PROJECT SPONSOR.

Project funds may be released in installments, at the discretion of the DISTRICT, upon submittal of a payment request by the PROJECT SPONSOR or LIAISON AGENT. The DISTRICT shall retain ten percent (10%) of each installment payment until the completion of the PROJECT.

The following costs, if authorized in the attached Exhibit A, shall be reimbursed only upon completion of the PROJECT to the reasonable satisfaction of the DISTRICT and in accordance with Exhibit B: personnel, equipment, project management, administration, inspection, and design, permitting, planning, engineering, and/or surveying costs. Assuming the PROJECT SPONSOR has otherwise fully complied with the requirements of the Agreement, reimbursement for all PROJECTS approved as Phase I projects will be made only upon commencement of construction of the PROJECT for which the Phase I planning, designing, engineering and/or permitting were directed, which may or may not involve further District funding. Procedures set forth below with respect to reimbursement by the District are subject to this requirement of commencement of construction.

The DISTRICT shall have the right to withhold any payment hereunder, either in whole or part, for non-compliance with the terms of this Agreement.

8. **FINAL REIMBURSEMENT** - The PROJECT SPONSOR, upon completion of the PROJECT, shall submit to the DISTRICT a request for final reimbursement of the PROJECT AMOUNT less any prior installment payments. The Payment amounts previously retained by the DISTRICT shall be paid upon (1) receipt of the Final Audit report of expenses incurred on the PROJECT by the DISTRICT, (2) full completion of the PROJECT to the reasonable satisfaction of the DISTRICT, (3) submission of Project Completion Certification Form No. 90-13 (Exhibit E), and (4) submission of a photograph of the PROJECT showing the sign required by Paragraph 17. Unless otherwise determined by the DISTRICT, the final reimbursement check shall be presented by a DISTRICT representative to the PROJECT SPONSOR during a public commission meeting or public dedication ceremony for the PROJECT facility.

9. **RECORDS RETENTION** - The PROJECT SPONSOR shall retain all records supporting the PROJECT COSTS for three (3) years after the end of the fiscal year in which the Final Payment is released by the DISTRICT, except that such records shall be retained by the PROJECT SPONSOR until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the three-year retention period.

10. **NONCOMPLIANCE** - The DISTRICT shall have the right to reimbursement, either in whole or part as it may determine, of the funds provided hereunder for noncompliance by the PROJECT SPONSOR with any of the terms of this Project Agreement. Upon notification from the DISTRICT, the PROJECT SPONSOR shall reimburse such funds directly to the DISTRICT. The provisions of this paragraph shall survive completion of the PROJECT.

11. **DISTRICT PROJECT MANAGER** - The Executive Director, or his designee, is hereby designated as the DISTRICT's Project Manager for the purpose of this Project Agreement and shall be responsible for monitoring performance of its terms and conditions and for approving all reimbursement requests prior to payment.

12. **SPONSOR'S LIAISON AGENT** - The PROJECT SPONSOR shall appoint a LIAISON AGENT, whose name and title shall be submitted to the DISTRICT upon execution of the Project Agreement, to act on behalf of the PROJECT SPONSOR relative to the provisions of the Project Agreement.

13. **STATUS REPORTS** - The PROJECT SPONSOR or LIAISON AGENT shall submit to the DISTRICT project status reports during the PROJECT term. These Quarterly Reports are to be on Form #95-02 (Exhibit F). Project design drawings, engineering drawings, and a copy of the Project bid award construction item cost list will be submitted as available. Photographs shall be submitted when appropriate to reflect the work accomplished. NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit G may result in revocation of this Agreement.

14. **LAWS** - The PROJECT SPONSOR agrees to obtain and to abide by all federal, state and local permits and proprietary authorizations, and all applicable laws and regulations in the development of the PROJECT. The PROJECT SPONSOR agrees that all PROJECT facilities shall be designed and constructed in compliance with state and federal statutory requirements for accessibility by handicapped persons as well as all other federal, state and local laws, rules and requirements.

15. **NON-DISCRIMINATION** - The PROJECT SPONSOR agrees that when completed, the PROJECT shall be readily accessible, on a non-exclusive basis, to the general public without regard to age, sex, race, physical handicap, or other condition, and without regard to residency of the user in another political subdivision. When such is required, adequate parking shall be made available by the PROJECT SPONSOR to accommodate vehicles for the number of persons for which the PROJECT is being developed.

16. **SITE DEDICATION** - The PROJECT SPONSOR also agrees that the PROJECT site shall be dedicated for the public use for a minimum period of twenty-five (25) years prior to or immediately following completion of the PROJECT, such dedication to be in the form of a deed, lease, management agreement or other legally binding document. Any change in such dedication shall require the prior approval of the DISTRICT. The PROJECT SPONSOR shall record evidence of such dedication within the Public Records of the County in which the PROJECT is located.

17. **ACKNOWLEDGMENT** – For construction projects, the PROJECT SPONSOR shall erect a permanent sign, approved by the DISTRICT, in a prominent location such as the project entrance of the completed project, which shall indicate that the DISTRICT contributed funds for the PROJECT. The wording of the sign required by this paragraph shall be approved by the DISTRICT's staff before construction and installation of said sign. This sign shall contain the DISTRICT logo (Exhibit H) unless otherwise stipulated by the DISTRICT. In the event that the PROJECT SPONSOR erects a temporary construction sign, it shall also indicate the DISTRICT's participation. For all other type projects, the PROJECT SPONSOR shall acknowledge the DISTRICT where feasible, in concurrence with the DISTRICT staff's recommendations.

18. **PROJECT MAINTENANCE** - When and as applicable, the PROJECT SPONSOR agrees to operate, maintain, and manage the PROJECT for the life of the PROJECT improvements and will pay all expenses required for such purposes. The PROJECT improvements shall be maintained in accordance with the standards of maintenance for other local facilities owned and operated by project sponsor, and in accordance with applicable health standards. PROJECT facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The PROJECT SPONSOR warrants and represents that it has full legal authority and financial ability to operate and maintain said PROJECT facilities and improvements.

19. **FEES** – Any fees charged for this PROJECT shall be reasonable and the same for the general public of all member counties. The PROJECT SPONSOR must demonstrate that a minimum of fifty percent (50%) of the PROJECT fees will be utilized for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

20. **SOVEREIGN IMMUNITY** - Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity under Section

768.28, Florida Statutes. The PROJECT SPONSOR acknowledges that the DISTRICT, its employees, commissioners and agents are solely providing funding assistance for the PROJECT and are not involved in the design, construction, operation or maintenance of the PROJECT.

21. **INSPECTIONS** - The DISTRICT reserves the right, upon reasonable request, to inspect said PROJECT and any and all records related thereto at any time.

22. **RIGHTS AND DUTIES** - The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall, unless the context clearly requires otherwise, survive completion of the PROJECT. The PROJECT SPONSOR may not assign this Agreement nor any interest hereunder without the express prior written consent of the DISTRICT.

23. **WAIVERS** - Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.

24. **NOTICE** - Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing, postage paid, and shall be sent by certified mail, return receipt requested, to the DISTRICT or PROJECT SPONSOR at the addresses below. The notice shall be effective on the date indicated on the return receipt.

To the DISTRICT at:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477-9498

To the PROJECT SPONSOR at:

Town of Palm Beach
Attention: Coastal Coordinator, Public Works
951 Old Okeechobee Road, Suite A
West Palm Beach, FL 33434

25. **NO JOINT VENTURE** - The DISTRICT's role with respect to the PROJECT is that of a funding assistance authority only and the DISTRICT is not, and shall not be considered to be, an agent, partner, or joint venturer with the PROJECT SPONSOR.

26. **GOVERNING LAW** - The validity, interpretation and performance of this Agreement shall be controlled and construed according to the laws of the State of Florida.

27. **TRANSFERENCE** - It is the intent of the DISTRICT to issue this funding assistance to the PROJECT SPONSOR who has made application for this assistance. In the event

the PROJECT SPONSOR transfers ownership or management of the PROJECT to a party or parties not now a part of this document, other than another governmental entity that agrees to assume, in writing, PROJECT SPONSOR'S obligation hereunder, the DISTRICT retains the right to full reimbursement from the PROJECT SPONSOR to the full extent of the funding assistance provided by the DISTRICT, including but not limited to any costs and reasonable attorney's fees (regardless of whether litigation ensues) incurred by the DISTRICT in collecting said reimbursement.

28. **ENTIRE UNDERSTANDING** - This Agreement, including any exhibits made a part hereof, embodies the entire Agreement and understanding of the parties and supersedes all prior oral and written communications between them. The terms hereof may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

WITNESSES:

FLORIDA INLAND NAVIGATION DISTRICT

_____

By: _____
Director

_____

DATE: _____

WITNESSES:

PROJECT SPONSOR

_____

By: _____

Title: _____

_____

DATE: _____

EXHIBIT A

FLORIDA INLAND NAVIGATION DISTRICT
ASSISTANCE PROGRAM 2012

PROJECT COST ESTIMATE
(See Rule Section 66B-2.005 & 2.008 for eligibility and funding ratios)

PROJECT TITLE: Town of Palm Beach Waterway

APPLICANT: Town of Palm Beach

Project Elements *(Please list the MAJOR project elements and provide a general cost break out for each one. For Phase I Projects, please list the major elements and products expected)*	Quantity Estimated Cost (Number and/or Footage)	Applicant's Cost	FIND Cost
Bathymetric and Field Surveys	$20,000	$10,000	$10,000
Engineering and Design	$30,000	$15,000	$15,000
Project Permitting	$30,000	$15,000	$15,000
** TOTALS =	$ 80,000	$ 40,000	$ 40,000

Form No. 90-25 (New 10/14/92, Revised 04-24-06)

EXHIBIT B

CHAPTER 66B-2 — WATERWAYS ASSISTANCE PROGRAM (2012)

66B-2.001 Purpose.
66B-2.002 Forms.
66B-2.003 Definitions.
66B-2.004 Policy.
66B-2.005 Funds Allocation.
66B-2.006 Application Process.
66B-2.0061 Disaster Relief Applications.
66B-2.007 Application Form. (Repealed)
66B-2.008 Project Eligibility.
66B-2.009 Project Administration.
66B-2.010 Project Agreement. (Repealed)
66B-2.011 Reimbursement.
66B-2.012 Accountability.
66B-2.013 Acknowledgement.
66B-2.014 Small-Scale Spoil Island Restoration and Enhancement Projects.
66B-2.015 Small-Scale Derelict Vessel Removal Projects.
66B-2.016 Waterways Cleanup Events.

66B-2.001 - Purpose.

Recognizing the importance and benefits of inland navigation channels and waterways, as well as noting problems associated with the construction, continued maintenance and use of these waterways, the Florida Legislature created Section 374.976, F.S. This law authorizes and empowers each inland navigation district to undertake programs intended to alleviate the problems associated with its waterways. The purpose of this rule is to set forth the District's policy and procedures for the implementation of an assistance program under Section 374.976, F.S., for local governments, member counties and navigation related districts within the District. This program will be known hereafter as the Florida Inland Navigation District's Waterways Assistance Program.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.001.

66B-2.002 - Forms.

All forms for the administration of this program are available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.002.

66B-2.003 - Definitions.

The basic terms utilized in this rule are defined as follows:

(1) "APPLICANT" means an eligible governmental agency submitting an application through this program.

(2) "APPLICATION" means a project proposal with the required documentation.

(3) "AUTHORIZED SUBMISSION PERIOD" means the established period for

submitting applications to the District.

(4) "BEACH RENOURISHMENT" means the placement of sand on a beach for the nourishment, renourishment or restoration of a beach.

(5) "BOARD" means the Board of Commissioners of the Florida Inland Navigation District.

(6) "DISTRICT" means the Florida Inland Navigation District (FIND).

(7) "ELIGIBLE GOVERNMENTAL AGENCY" means member counties, local governments and navigation related districts within the taxing boundaries of the District.

(8) "ENVIRONMENTAL PERMITS" means those permits, proprietary authorizations, exemptions, or general permits for construction below mean high water line of a navigable waterway required and issued by or on behalf of the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, and the South Florida or the St. Johns River Water Management Districts or their successors.

(9) "EXECUTIVE DIRECTOR" means the Executive Director of the Florida Inland Navigation District.

(10) "LIAISON AGENT" means the contact person officially designated to act on behalf of the applicant or the project sponsor.

(11) "LOCAL GOVERNMENTS" means municipalities, cities, or consolidated county governments, which are located within the member counties.

(12) "MARITIME MANAGEMENT PLAN" means a written plan containing a systematic arrangement of elements specifically formulated to identify, evaluate and promote the benefits of eligible waterway accessibility and enjoyment, with consideration and respect to the physical, environmental and economic parameters of the planning area.

(13) "MATCHING FUNDS" means those funds provided by the local sponsor to the project.

(14) "MEMBER COUNTY" means a county located within the taxing boundaries of the District which includes Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade Counties.

(15) "NAVIGATION RELATED DISTRICTS" means port authorities, inlet districts or any other agency having legally authorized navigation related duties in waterways of the District.

(16) "PRE-AGREEMENT COSTS" means project costs approved by the District Board which have occurred prior to the execution of the project agreement.

(17) "PROGRAM" means the Florida Inland Navigation District Waterways Assistance Program.

(18) "PROGRAM FUNDS" means financial assistance awarded by the Board to a project for release to the project sponsor pursuant to the terms of the project agreement.

(19) "PROJECT" means a planned undertaking consisting of eligible program facilities, improvements or expenses for the use and benefit of the general public.

(20) "PROJECT AGREEMENT" means an executed contract between the District and a project sponsor setting forth mutual obligations regarding an approved project.

(21) "PROJECT MAINTENANCE" means any usual action, activity, expense, replacement, adjustment or repair taken to retain a the project or grant item in such condition that it may be continuously used at its original or designed capacity and efficiency for its intended purpose.

(22) "PROJECT MANAGER" means the District employee who is responsible for

monitoring the performance of the Project and compliance with the project agreement.

(23) "PROJECT PERIOD" means the approved time during which costs may be incurred and charged to the funded project.

(24) "PROJECT SPONSOR" means an eligible governmental agency receiving program funds pursuant to an approved application.

(25) "PUBLIC BUILDING" means a building or facility on government owned property that is owned or operated by a governmental entity, or operated by a third party operator. The building or facility must provide waterway related information, public meeting space, or educational services and be open to members of the public on a continual basis without discrimination.

(26) "PUBLIC MARINA" means a harbor complex used primarily for recreational boat mooring or storage, the services of which are open to the general public on a first come, first served basis without any qualifying requirements such as club membership, stock ownership, or differential in price.

(27) "PUBLICLY OWNED COMMERCIAL OR INDUSTRIAL WATERWAY ACCESS" means any publicly owned area specifically designed to be used for staging, launching, or off-loading by commercial or industrial waterway users on a first come, first served, short-term basis, to gain entry to or from the District's waterways to serve the infrastructure needs of the District's waterway users.

(28) "TRIM HEARING" means a public hearing required by Chapter 200, F.S., concerning the tax and budget of the District.

(29) "WATERWAYS" means the Atlantic Intracoastal Waterway, the Okeechobee Waterway, the Barge Canal in Brevard County west of the Port Canaveral Locks, those portions of the Dania Cut-Off Canal and the Hillsboro Canal east of the water control structures, all navigable natural rivers, bays, creeks or lagoons intersected by said waterways and all navigable natural creeks, rivers, bays or lagoons entering or extending from said waterways.

(30) "WATERWAY RELATED ENVIRONMENTAL EDUCATION" means an interdisciplinary holistic process by which the learner: develops an awareness of the natural and manmade environments of waterways; develops knowledge about how the environment of the waterways works; acquires knowledge about the technological, social, cultural, political, and economic relationships occurring in waterway related environmental issues; and, becomes motivated to apply action strategies to maintain balance between quality of life and quality of the environment of waterways.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 9-2-92, 2-6-97, Formerly 16T-2.003, Amended 5-17-98, 3-21-01, 3-20-03, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08.

66B-2.004 - Policy.

The following constitutes the policy of the District regarding the administration of the program:

(1) Financial Assistance Eligibility: Financial assistance, support and cooperation may be provided to eligible governmental agencies for approved projects as follows:

(a) Member counties may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional

anchorage management, beach renourishment, public recreation, inlet management, environmental education, maritime management plans, and boating safety projects directly related to the waterways.

(b) Eligible local governments may also be provided financial assistance, support and cooperation in planning and carrying out public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, maritime management plans, environmental education, and boating safety projects directly related to the waterways.

(c) Navigation related districts may be provided with financial assistance to pay part of the costs of the planning and acquisition of dredge material management sites if the Board finds that the site is required for the long-range maintenance of the Atlantic Intracoastal Waterway channel. All such sites must meet the development and operational criteria established by the District through a long-range dredge material management plan for that county. Navigation related districts may also be provided with assistance for waterway related access projects, environmental mitigation projects associated with waterway improvement related activities, inlet channel maintenance, and inlet management projects if the Board finds that the project benefits public navigation in the Atlantic Intracoastal Waterway. All navigation related districts shall contribute at least equal matching funds to any District financial assistance provided. Seaports may also be furnished assistance and support in planning and carrying out environmental mitigation projects. All seaport projects shall benefit publicly maintained channels and harbors. Each seaport shall contribute matching funds for funded projects.

(d) Eligible projects shall include the acquisition and development of public boat ramps and launching facilities, including those in man-made, navigable waterways contiguous to "waterways" as defined in Rule 66B-2.003, F.A.C.

(2) Notification: The District will notify by direct mail and/or advertised public notice all eligible governmental agencies of the program and the upcoming authorized submission period. Funding allocations to navigation related districts, member counties and local governments shall be based upon the proportional share of the District's ad valorem tax collections from each county.

(3) Project Approval: Approval of projects by the District shall be in accordance with these rules.

(4) Project Accessibility: Facilities or programs funded in whole or in part by program funds shall be made available to the general public of all of the member counties on a non-exclusive basis without regard to race, color, religion, age, sex or similar condition. Additionally, facilities funded in whole or in part by program funds, shall not require a paid membership for the general public of all of the member counties as a condition to use the facilities. User or entrance fees may be charged for the use of facilities funded in whole or in part by program funds, however such fees shall be reasonable and shall be the same for the general public of all of the member counties.

(5) Waterway Impacts: All development projects must be designed so as not to impact navigation along the District's waterways through the placement of structures, attendant uses, or the necessity of a boating speed zone for safety purposes. Before applying for boating speed zone designation in District waterways because of a project funded by this program, the sponsor shall first receive approval from the Board. The Board will use the criteria found in Section 327.46(1), F.S., in determining whether to

approve the proposed boating speed zone.

(6) Project Maintenance: The project sponsor shall be responsible for the operation, maintenance, and management of the project for the anticipated life of the project and shall be responsible for all expenses required for such purposes. The project shall be maintained in accordance with the standards of maintenance for other similar local facilities and in accordance with applicable health standards. Project facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The project sponsor shall have full legal authority and financial ability to operate and maintain the project facilities.

(7) Education Facilities and Programs: Waterways related environmental education facilities and programs sponsored by the District shall occur at specially designated environmental education facilities located adjacent and contiguous to the waterways. It is the District's intent to consolidate its environmental education efforts in the least number of facilities within an area that will adequately serve the education needs of that area of the District.

(8) Public Information Availability: Public information produced with assistance from this program shall not be copyrighted and shall be provided free of cost, except for the cost of reproduction, to the public.

(9) Third-Party Project Operators: Projects that are being operated by a third party shall have sufficient oversight by the eligible project sponsor as determined by the Board. Such oversight, at a minimum, will include a project liaison that is a staff member of the eligible project sponsor, and oversight of the operating hours and admission fees of the facility by the eligible project sponsor through a legal agreement. All third party projects shall be open to the public in accordance with this rule.

(10) Non-compliance: The District shall terminate a project agreement and demand return of program funds disbursed to the project sponsor for non-compliance with any of the terms of the project agreement or this rule, if such non-compliance calls into question the ability of the applicant to complete the project. Failure of a project sponsor to comply with the provisions of this rule or the project agreement shall result in the District declaring the project sponsor ineligible for further participation in the program until such time as compliance has been met to the satisfaction of the District.

(11) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must create and maintain an enterprise fund for the public project that shall plan for and retain at all times sufficient funds for the on-going maintenance of the facility during its project life. Accounting records of the previous five years of the public project's enterprise fund will be submitted as part of any subsequent assistance program application to the District.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (2) FS. History–New 12-17-90, Amended 2-3-94, 2-6-97, Formerly 16T-2.004, Amended 5-18-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-1-09, 2-22-10, 3-7-11, 3-7-12

66B-2.005 - Funds Allocation.

The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year.

If funds are determined to be available for the program, the District will notify potential eligible governmental agencies of the availability of program funding. Applications will be reviewed by the Board utilizing District Forms No. 91-25 and 91-25 (a thru f) Waterways Assistance Program Application Evaluation and Rating Worksheet (effective date 4-24-06); and 93-25 and 93-25 (a, b and c) Waterways Assistance Program Navigation Districts Application Evaluation and Rating Worksheet (effective date 4-24-06), hereby incorporated by reference and available from the District office.

(1) Funding Assistance Availability: In as much as the District has other fiscal responsibilities and operational needs, financial assistance to eligible government agencies shall not exceed an amount equal to eighty (80) percent of the proportional share of the District's ad valorem tax collections from each county in which such agencies are located. The District may make an exception to this funding limitation, if funds are determined to be available based upon the District's overall goals, management policies, fiscal responsibilities and operational needs, or in counties that are recovering from a state of emergency declared under Chapter 252, F.S.

(2) Project Funding Ratio: All financial assistance and support to eligible governmental agencies shall require, at a minimum, equal matching funds from the project sponsor, with the exception of public navigation projects that meet the provisions of subsection 66B-2.005(7), F.A.C., land acquisition projects in accordance with subsection 66B-2.005(8) and Rule 66B-2.008, F.A.C., and small-scale spoil island restoration and enhancement projects that meet the provisions of Rule 66B-2.014, F.A.C. Applicant's in-house costs are limited pursuant to paragraph 66B-2.008(1)(c), F.A.C. All financial assistance to seaports shall require equal matching funds. The District shall contribute no more than fifty percent (50%) of the local share of the cost of an inlet management or beach renourishment project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project.

(3) Pre-agreement Expenses: The project sponsor shall not commence work on an approved project element prior to the execution of the project agreement unless authorized by the Board during the review and funding approval process. Board authorization of pre-agreement expenses will be given for the commencement of work prior to the execution of a project agreement if the Board determines that there is a benefit to the District, its waterways or its constituents. All project costs must be incurred and work performed within the project period as stipulated in the project agreement unless pre-agreement costs are approved by the Board. Pre-agreement expenses will be approved if they are consistent with the provisions of Rule 66B-2.008, F.A.C., and occur within the fiscal year of the grant application submission (October 1st to September 30th). Pre-agreement expenses, except for projects approved by the Board as multi-year projects, will be limited to fifty (50) percent of the project's total cost and if the expenses are eligible project expenses in accordance with this rule. Only one-half (1/2) or less of the approved pre-agreement expenses will be eligible for reimbursement funding from the District, except for projects approved by the Board as multi-year projects. The Board shall consider a waiver of the limitation on pre-agreement expenses for Small-Scale Derelict Vessel grants and land acquisition projects when the applicant demonstrates a direct need and benefit and the project is in accordance with the applicable provisions of Chapter 66B-2, F.A.C.

(4) Multi-Year Funding: The construction phase of projects that are large scale,

involve multiple phases, have a construction time line of one year or longer, or are requesting a significant amount of assistance funding in relation to the total assistance available for the county where the project is located, will be reviewed and approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. The determination by the Board to provide assistance funding on a multi-year basis can be made at any time during the application review process. All approved multi-year projects are limited to a maximum of two (2) additional funding requests.

(5) Inlet Management and Beach Renourishment: Projects and project elements in the categories of inlet management and beach renourishment shall be subject to the following provisions. The District shall contribute no more than fifty percent of the local share of the cost of the project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project. Funding for the construction phase of an inlet management or beach renourishment project may be approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. Additionally the following provisions shall be met for inlet management or beach renourishment projects:

(a) Inlet Management: Inlet management projects shall benefit public navigation within the District and shall be consistent with Department of Environmental Protection approved inlet management plans and the statewide beach management plan pursuant to Section 161.161, F.S. Inlet management projects that are determined to be consistent with Department of Environmental Protection approved inlet management plans are declared to be a benefit to public navigation.

(b) Beach Renourishment: All projects in this category shall be consistent with the statewide beach management plan. Beach renourishment projects shall only include those beaches that have been adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project. The determination of beach areas that are adversely impacted by navigation for the purposes of this program shall be made by Department of Environmental Protection approved inlet management plans. If state funding is not provided for a beach project, public access with adequate parking must be available in accordance with Chapter 161, F.S.

(6) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must be within the Intracoastal Right-of-Way (ROW), or provide public navigation channel access to two or more public accessible launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or that the cost of identifying the source of channel sedimentation exceeds the cost of the dredging project.

(b) Navigation channel lighting and markers must be located on primary or secondary public navigation channels.

All other public navigation projects or project elements must have a minimum of one facility open to the public and will only qualify for up to fifty percent (50%) program funding. Dredging that is associated or ancillary to another use (such as a boat ramp, marina or pier) will be prioritized according to the associated use.

(7) Land Acquisition: All land acquisition projects shall qualify for a maximum of twenty-five (25) percent program funding. All pre-agreement expenses for land acquisition must be completed within one-year of the date of application for funding. All funded land acquisition projects must construct the required boating access facility within 7 years of completion of the land acquisition, or the Distirct may require the applicant to refund the program funding.

(8) Seaport Funding Eligibility: Financial assistance to seaports may exceed the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the county in which such seaport is located if the seaport can demonstrate that a regional benefit occurs from the port's activities. Financial assistance to a seaport project that demonstrates a regional benefit shall not exceed an amount equal to (i) the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the counties where the benefit is demonstrated less (ii) funding allocated in the same fiscal year to all other local government projects funded in those counties.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (3) FS. History–New 12-17-90, Amended 6-24-93, 9-5-96, 2-6-97, Formerly 16T-2.005, Amended 5-17-98, 8-26-99, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 4-1-09, 3-7-11, 3-7-12.

66B-2.006 - Application Process.

(1) Application Period: With the exception of eligible Disaster Relief Projects, eligible Small-Scale Spoil Island Restoration and Enhancement Projects eligible Small-Scale Derelict Vessel Applications and Waterway Cleanup Events, all applications for assistance through this program will be submitted during the authorized submission period that shall be established by vote of the Board at a scheduled meeting.

(2) Application Forms: Florida Inland Navigation District Waterways Assistance Program Project Application FIND Form Number 90-22 (effective date 4-24-06) and 93-22a, Project Information – Navigation Related Districts (effective date 4-24-06) are hereby incorporated by reference and available from the District office. With the exception of projects eligible under the Small-Scale Spoil Island Restoration and Enhancement program, the Small-Scale Derelict Vessel program, and eligible Waterway Cleanup Events, all applications for financial assistance and support through this program from member counties and local governments shall be made on Form Number FIND 90-22 and shall include a detailed cost estimate submitted on FIND Form No. 90-25, Florida Inland Navigation District Assistance Program Project Cost Estimate, (effective date 4-24-06), hereby incorporated by reference and available from the District office. All applications for financial assistance and support through this program from navigation related districts shall be made on FIND Form Number 93-22 (effective date 4-24-06), hereby incorporated by reference and available from the District office, and shall include a detailed cost estimate submitted on FIND Form No. 90-25. In addition, all applicants

shall submit a complete and detailed Project Timeline (FIND FORM No. 96-10) (effective date 4-15-07).

(3) Sponsor Resolution: The project sponsor shall approve the submission of an application by official resolution from its governing board or commission. Said resolution shall be made on FIND Form No. 90-21, Resolution for Assistance Under the Florida Inland Navigation District Waterways Assistance Program (effective date 10-14-92), hereby incorporated by reference and available from the District office.

(4) Attorney's Certification: If the application is for a project that is a land based development project the applicant shall submit an Attorney's Certification of Title, FIND Form Number 94-26 (effective date 5-25-00), hereby incorporated by reference and available from the District office.

(5) Maps and Geographic Information: All applicants shall be required to submit, at minimum, the following geographic information: A County location map, a project location map, a project boundary map, and a clear and detailed site development map for land development projects.

(6) Application Review: Applicants shall obtain the local FIND Commissioner's initials on Form No. 90-26 prior to submitting the application to the District office. It is the applicant's responsibility to make timely arrangements for the local FIND Commissioner's review. In the absence of extenuating circumstances outside of the applicant's control as determined by the Board of Commissioners, an application shall not be considered complete if it does not include the local FIND commissioner's initials on Form No. 90-26. Upon receipt in the District office, staff will review the applications for completeness of the informational requirements identified in the Application Checklist, FIND Form Number 90-26 (effective date 7-30-02), and for compliance with the eligibility requirements of this rule. When an application is determined by staff to be incomplete or ineligible, staff will immediately inform the applicant by mail. The applicant will then have until the date established by the Board in the application package to bring the application into compliance. If the applicant fails to provide a complete application in compliance with these rules, the application will not be considered for funding. In order to have a complete application, the applicant shall not only submit the forms required under Rule 66B-2.006, F.A.C., and any other information requirements identified in the Application Checklist (FIND Form Number 90-26), but such forms and other submitted information must be completely filled out, executed as applicable, and also establish compliance with Chapter 66B-2, F.A.C.

(7) Interlocal Agreements: Applications that the Board determines will directly benefit the maintenance of the Atlantic Intracoastal Waterway channel as documented by the District's long range dredged material management plans, will directly benefit the maintenance of the Okeechobee Waterway channel as documented by the District's long range dredged material management plan, will directly benefit the maintenance or improvement of District property, right-of-way or navigation interests, or have multiple funding partners including the Corps of Engineers as the project manager can qualify for project assistance through an interlocal agreement pursuant to Chapter 163, F.S., or Section 374.984(6)(a), F.S. District staff will identify these applications and present them to the Board for their determination as to funding. Interlocal agreement projects shall comply with all other provisions of this rule, except for pre-agreement expenses, permitting and property control requirements.

(8) Application Presentations: Applications determined to be complete and in compliance with this rule will be forwarded to the Board for review and then scheduled for presentation to the Board at a scheduled meeting of the Board. Applicants can decline to make a presentation to the Board by submitting a written request.

(9) Application Evaluation and Rating Score: Following the presentations, the Board will review the applications and evaluate them using the Waterways Assistance Program Application Evaluation and Rating Worksheets No. 91-25 (a thru f) for Waterways Assistance Program applications, and 93-25 (a, b and c) Waterways Assistance Program Navigation Related Districts applications. The total points awarded to each application by the Commissioners will be averaged to determine an application's final rating score. The final rating score for each application must equal or exceed 35 points for the application to be considered for funding assistance. Reconsideration of any application with a final rating score of less than 35 points will only occur if the majority of the Commissioners evaluating the project rated the project equal to or exceeding 35 points and two-thirds of the Commissioners vote for reconsideration of the application. Only Applicants that are eligible under Rule 66B-2.0061, F.A.C., "Disaster Relief Applications", shall complete FIND Form No. 91-25F Emergency Re-Construction (effective date 4-24-06).

(10) Funding Determination: The Board will hold a funding allocation meeting at which time the Board will determine the allocation of funds, if any, to each project and the projects will be ranked by overall average score to facilitate final funding decisions by the Board. Allocations will be based in part upon the cumulative score of the applications as calculated from the Project Evaluation and Rating Form. Allocations will also be based upon the specific needs of the individual counties.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 9-2-92, 6-24-93, 4-12-95, Formerly 16T-2.006, Amended 5-25-00, 3-21-01, 7-30-02, 3-20-03, 4-21-05, 4-24-06, 4-15-07, 3-25-08.

66B-2.0061 - Disaster Relief Applications.

Disaster Relief applications may be submitted to the District and considered by the Board at any time during the year to provide assistance to an eligible applicant for the removal of navigation obstructions and repair or replacement of waterway facilities damaged by a declared natural disaster. The District shall consider these applications in accordance with these rules.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 6-24-93, Amended 2-6-97, Formerly 16T-2.0061, Amended 4-24-06.

66B-2.008 — Project Eligibility.

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, inlet management, maritime management planning, environmental mitigation and beach renourishment.

(a) Program funds may be used for projects such as acquisition, planning,

development, construction, reconstruction, extension, or improvement, of the following types of projects for public use on land and water. These project types will be arranged into a priority list each year by vote of the Board. The priority list will be distributed to applicants with the project application.

1. Public navigation channel dredging;
2. Public navigation aids and markers;
3. Inlet management projects that are a benefit to public navigation in the District;
4. Public shoreline stabilization directly benefiting the District's waterway channels;
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access;
6. Waterway signs and buoys for safety, regulation or information;
7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities;
8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities;
9. Derelict Vessel Removal;
10. Waterways related environmental education programs and facilities;
11. Public fishing and viewing piers;
12. Public waterfront parks and boardwalks and associated improvements;
13. Maritime Management Planning;
14. Waterways boating safety programs and equipment;
15. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and
16. Environmental restoration, enhancement or mitigation projects and
17. Other waterway related projects.

(b) Ineligible Projects or Project Elements. Project costs ineligible for program funding or matching funds will include: contingencies, miscellaneous, reoccurring personnel related costs, irrigation equipment, ball-courts, park and playground equipment, and any extraneous recreational amenities not directly related to the waterway such as the following:

1. Landscaping that does not provide shoreline stabilization or aquatic habitat;
2. Restrooms for non-waterway users;
3. Roadways providing access to non-waterway users;
4. Parking areas for non-waterway users;
5. Utilities for non-waterway related facilities;
6. Lighting for non-waterway related facilities;
7. Project maintenance and maintenance equipment;
8. Picnic shelters and furniture;
9. Vehicles to transport vessels;
10. Operational items such as fuel, oil, etc.
11. Office space that is not incidental and necessary to the operation of the main eligible public building; and
12. Conceptual project planning, including: cost-benefit analysis, public surveys, opinion polls, public meetings, and organizational conferences.

(c) Project Elements with Eligibility Limits: Subject to approval by the Board of an itemized expense list:

EXHIBIT B

1. The following project costs will be eligible for program funding or as matching funding if they are performed by an independent contractor:

a. Project management, administration and inspection;

b. Design, permitting, planning, engineering or surveying costs for completed construction project;

c. Restoration of sites disturbed during the construction of an approved project;

d. Equipment costs.

Before reimbursement is made by the District on any of the costs listed in subparagraph 1. above, a construction contract for the project, approved and executed by the project sponsor and project contractor must be submitted to the District.

2. Marine fire-fighting vessels are eligible for a maximum of $60,000 in initial District funding. Marine law enforcement and other vessels are eligible for a maximum of $30,000 in initial District funding. All future replacement and maintenance costs of the vessel and related equipment will be the responsibility of the applicant.

3. Waterway related environmental education facility funding will be limited to those project elements directly related to the District's waterways.

(d) Phasing of Projects: Applications for eligible waterway projects may be submitted as a phased project where Phase I will include the design, engineering and permitting elements and Phase II will include the construction of the project. A description and cost estimate of the Phase II work shall be submitted along with the Phase I application for Board review.

(2) Property Control: The site of a new proposed land-based development project, with the exception of those projects requesting Small-Scale Spoil Island Restoration and Enhancement funding, shall be dedicated for the public use for which the project was intended for a minimum period of 25 years after project completion. Such dedication shall be in the form of a deed, lease, management agreement or other legally binding document and shall be recorded in the public property records of the county in which the property is located. This property control requirement also applies to a project site owned by another governmental entity. The governmental entity that owns the project site may be joined as a co-applicant to meet this property control requirement. Existing land based development projects that are being repaired, replaced or modified must demonstrate that the project site has been dedicated for public use for at least 25 years with at least 10 years remaining on the dedication document. Property shall also be deemed dedicated for public use if:

(a) The property has been designated for the use for which the project is intended (even though there may have been no formal dedication) in a plat or map recorded prior to 1940, or

(b) The project sponsor demonstrates that it has had exclusive control over the property for the public use for which the project is intended for a period of at least 30 years prior to submission of the application, or

(c) There is no ongoing litigation challenging the designated use of the property as shown on the plat or map, nor has there been any judicial determination contrary to the use by the public for the use shown on the plat or map.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that

include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the District's final TRIM hearing. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Should the environmental permitting element of an application that has construction elements requiring state or federal environmental permits or authorizations not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. Whereby funding decisions are completed at the final TRIM hearing, the District will not deviate from the funding schedule to accommodate any application deficiency.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. The public marina will be required to establish and maintain an accounting of the funds for the facility and shall plan for and retain at all times sufficient funds for the on-going maintenance of the facility during its project life.

(5) The District may assist eligible local governments with efforts to prepare and implement a comprehensive maritime management plan. The plan shall be utilized by the eligible government to promote and maximize the public benefit and enjoyment of eligible waterways, while identifying and prioritizing the waterway access needs of the community. The plan should not duplicate any existing or ongoing efforts for the same waterway or water shed, nor shall the District participate in any effort that does not address the basic maritime needs of the community.

(a) The District shall participate in one plan per County. Existing plans may be updated at reasonable intervals or amended to include waterway areas previously not included in the original effort. Public, government, environmental, industry and other pertinent interest groups shall be solicited and included for input in the planning process.

(b) The plan shall be utilized as a tool to provide a minimum 5-year planning analysis and forecast for the maritime needs of the community, and shall include, at minimum, the following:

1. Public boat ramp & ramp parking inventory and analysis.
2. Public mooring and docking facility analysis, including day docks and transient slips.
3. Commercial and working waterfront identification and needs analysis.
4. The identification, location, condition and analysis of existing and potential navigation channels.
5. An inventory and assessment of accessible public shorelines.
6. Public Waterway transportation needs.
7. Environmental conditions that affect boat facility siting, a current resource inventory survey, and restoration opportunities.

8. Economic conditions affecting the boating community and boating facilities.

9. Acknowledgment and coordination with existing data and information, including an emphasis on the Intracoastal Waterway.

3) Projects requested for assistance program funding shall be consistent with the applicant's maritime management plan. The applicant should utilize the plan to assist in prioritizing waterway improvement projects.

(6) All eligible environmental restoration, enhancement or mitigation projects as well as the environmental restoration, enhancement or mitigation components of other types of projects shall be required to assign the mitigation credits to the District for that share of the project funded through the District's Assistance Program. All eligible environmental restoration, enhancement or mitigation projects shall provide public access where possible.

(7) Final Decisions: The Board will make all final decisions on the eligibility of a Project or specific project costs.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1)-(3) FS. History–New 12-17-90, Amended 9-2-92, 6-24-93, 2-3-94, 4-12-95, 9-5-96, 2-6-97, Formerly 16T-2.008, Amended 5-17-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-20-03, 3-3-04, 4-15-07, 3-25-08, 4-1-09, 2-22-10, 3-7-11, 3-7-12.

66B-2.009 — Project Administration.

The District will appoint a project manager who shall be responsible for monitoring the project and the project agreement. The project manager shall also be responsible for approving all reimbursement requests. The project sponsor shall appoint a liaison agent, who will be a member of the eligible applicant's staff, to act on its behalf in carrying out the terms of the project agreement. Administration of the project will be as follows:

(1) Project Agreement: For each funded project, the District and the project sponsor will enter into a project agreement. The project agreement shall be executed and returned by the project sponsor within six (6) months of the approval of the project funding and prior to the release of program funds, setting forth the mutual obligations of the parties concerning the project. The project agreement shall incorporate the applicable policies and procedures of the program as outlined in this rule. Project agreements will be for a two-year period with the possibility for one, one-year extension. Any request for a one-year extension of funding shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than July of fiscal year two of the approved project. This request will then be considered by the DISTRICT Board, whose decision shall be final. In review of these requests, the Board will take into consideration the current status and progress of the project and the ability of the applicant to complete the project within one additional year.

(2) Matching Funds: The project sponsor shall clearly identify and enumerate the amount and source of the matching funds it will be using to match the program funds supplied by the District for an approved project. The project sponsor shall provide suitable evidence that it has the matching funds available at the time the project agreement is executed.

(3) Agreement Modification: All proposed changes to the project agreement must be

submitted to the District in writing by the project sponsor accompanied by a statement of justification for the proposed changes. All project agreement amendments shall be approved by the District Board, except that the Executive Director may approve a minor project agreement amendment for a project within a county with the local District commissioner's concurrence. A minor project amendment shall not change the approved project's category, result in a reallocation of more than 35% of the approved funding of the project among project elements, nor allow for a greater than 35% change in the project scale or scope of work. Project agreement amendments will not include a change to the approved project's location or a change in the approved project's purpose or project type. Agreed changes shall be evidenced by a formal amendment to the project agreement and shall be in compliance with these rules.

(4) Project Reporting: The liaison agent will submit quarterly reports to the project manager summarizing the work accomplished since the last report, problems encountered, percentage of project completion and other appropriate information. These reports shall continue throughout the length of the project period until completion of the project. The report shall be submitted on Form 95-02, "Assistance Program Project Quarterly Status Report", dated 7-30-02, hereby incorporated by reference and available at the District office.

(5) Reimbursement Requests: The liaison agent may submit periodic reimbursement requests during the project period in accordance with Rule 66B-2.011, F.A.C. The project manager will approve or disapprove all reimbursement requests. The final payment of program funds will be made upon certified completion of the project by the District.

(6) Project Inspection: Upon reasonable request, the project manager shall have the right to inspect the project and any and all records relating to the project.

(7) Project Completion: The project shall be completed within three (3) years of the date of the beginning of the District's first fiscal year for which the project was approved. If the completion of a project is impacted by a declared state of emergency and the Board waives this rule section, the extension of time granted shall not exceed one additional three (3) year period.

(8) Project Completion Requirements: Upon completion of the project, the liaison agent shall provide the following to the project manager:

(a) A Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02), hereby incorporated by reference and available from the District office, which certifies that the project was completed in accordance with the project agreement and the final project plans.

(b) A final reimbursement request accompanied by all required billing statements and vouchers.

(c) Photograph(s) showing the installation of the sign required by Rule 66B-2.013, F.A.C.

(d) Photograph(s) of the completed project clearly showing the program improvements.

(9) Project Completion Review: The project manager will review the project completion package and will authorize or reject the final reimbursement payment which will include all retained funds from previous requests.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.009, Amended 3-21-01, 7-30-02.

66B-2.011 - Reimbursement.

The District shall release program funds in accordance with the terms and conditions set forth in the project agreement. This release of program funds shall be on a reimbursement only basis. The District shall reimburse the project sponsor for project costs expended on the project in accordance with the project agreement. Project funds to be reimbursed will require the submission of a Reimbursement Request Form and required supporting documents, FIND Form No. 90-14 (effective date 7-30-02) hereby incorporated by reference and available from the District office.

(1) Authorized Expenditures: Project funds shall not be spent except as consistent with the project agreement cost estimate that was approved by the Board, which shall be an attachment to the project agreement. This cost estimate will establish the maximum funding assistance provided by the District and the percentage of funding provided by each party to the project. The District will pay the lesser of:

(a) The percentage total of project funding that the Board has agreed to fund, or

(b) The maximum application funding assistance amount.

(2) Phase I Reimbursement: In accordance with these rules, reimbursement cannot be made on a Phase I application until a construction contract is executed by the applicant for the construction phase of the project. If the Phase I project is completed but a construction contract is not executed by the three (3) year project deadline, then the District shall only allow one (1) year from the Phase I project deadline to enter into the required construction contract before the Phase I funding is cancelled.

(3) Reimbursement Requests: All project costs shall be reported to the District and summarized on the Reimbursement Request Form. All requests for reimbursement shall include supporting documentation such as billing statements for work performed and cancelled payment vouchers for expenditures made.

(4) Retainage: The District shall retain ten percent (10%) of all reimbursement payments until final certification of completion of the project. The District shall withhold any reimbursement payment, either in whole or part, for non-compliance with the terms of this agreement.

(5) Check Presentations: A District representative shall present the final reimbursement check to the project sponsor during a public commission meeting or public dedication ceremony for the project facility.

(6) Recovery of Additional Project Funding: If the project sponsor receives additional funding for the project costs from another source that was not identified in the original application and that changes the agreement cost-share percentage, the project sponsor shall proportionately reimburse the District's program funds equal to the cost-share percentage in the approved project agreement. The project sponsor shall promptly notify the District of any project payments it receives from a source other than the District.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 6-24-93, Formerly 16T-2.011, Amended 3-31-99, 7-30-02.__-__-11

66B-2.012 - Accountability.

The following procedures shall govern the accountability of program funds:

(1) Accounting: Each project sponsor is responsible for maintaining an accounting

system which meets generally accepted accounting principles and for maintaining such financial records as necessary to properly account for all program funds.

(2) Quarterly Reports: The project sponsor shall submit quarterly project status reports to FIND in accordance with subsection 66B-2.009(4), F.A.C.

(3) Completion Certification: All required final completion certification documents and materials as outlined in subsection 66B-2.009(8), F.A.C., of this rule shall be submitted to the District prior to final reimbursement of program funds.

(4) Auditing: All project records including project costs shall be available for review by the District or by an auditor selected by the District for 3 years after completion of the project. Any such audit expenses incurred shall be borne entirely by the project sponsor.

(5) Project Records: The project sponsor shall retain all records supporting project costs for three years after either the completion of the project or the final reimbursement payment, whichever is later, except that should any litigation, claim, or special audit arise before the expiration of the three year period, the project sponsor shall retain all records until the final resolution of such matters.

(6) Repayment: If it is found by any State, County, FIND, or independent audit that program funds have not been used in accordance with this rule and applicable laws, the project sponsor shall repay the misused program funds to the District.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.012, Amended 7-30-02

66B-2.013 - Acknowledgement.

The project sponsor shall erect a permanent sign, approved by the District, at the entrance to the project site which indicates the District's participation in the project. This sign shall contain the FIND logo. In the event that the project sponsor erects a temporary construction sign, this sign shall also recognize the District's participation. If the final product of the project is a report, study or other publication, the District's sponsorship of that publication shall be prominently indicated at the beginning of the publication. If the project results in an educational display, the District's logo and a statement of the District's participation in the project shall be contained in the display.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.013, Amended 2-22-10.

66B-2.014 - Small-Scale Spoil Island Restoration and Enhancement Projects.

Proposals shall be accepted for the restoration or enhancement of spoil islands and natural islands within the District's waterways for recreational, navigational, educational, and environmental purposes. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – A Request for Proposals procedure will be used to request proposals for consideration. Proposals shall follow the format described in FIND Document #03-02, Call for Proposals – Small-Scale Spoil Island Restoration and Enhancement Program (effective date 7-30-02), hereby incorporated by reference and available from the District office. Proposals may be submitted to the District and

considered by the Board at any time during the year.

(2) Matching Funds: Small-scale spoil island restoration and enhancement may qualify for up to ninety percent (90%) program funds. The applicant's ten percent (10%) matching funds may include in-kind contribution pursuant to paragraph 66B-2.014(4)(b), F.A.C.

(3) Eligibility: All proposals must meet the following eligibility criteria to be considered for funding:

(a) Management Plan Compliance: Projects shall be in compliance with the provisions of any Spoil Island Management Plans or other management plans that govern the Project site.

(b) Property Control: The Project Sponsor must have written property rights on the Project site to construct and maintain the Project for a minimum of five years. Such property rights can be in the form of a lease, interlocal agreement, use agreement or other legal form approved by the District. The applicant shall include a map clearly delineating the location of all proposed work included in the application.

(4) Funds Allocation: Funds shall be allocated pursuant to Rule 66B-2.005, F.A.C., subject to the exceptions identified in this rule, and with the following additions:

(a) The District shall fund a maximum of up to $7,500 per project, not to exceed $22,500 per County, per fiscal year.

(b) The Project Sponsor may contribute in-kind construction labor; such in-kind construction labor costs will not be counted by the District as exceeding $10.00 per hour. No administrative costs can be incorporated into the Project as Project costs.

(c) The funding provided by the District shall only be allocated for specific Project expenses such as construction materials, plant materials, herbicides, etc. The funding provided by the District shall not be allocated for parties, food or beverages.

(5) Hold Harmless Waiver: All volunteers, who are not government employees, shall sign a hold harmless waiver Form No. 02-01 (New 7-30-02) as approved by the District and hereby incorporated by reference and available from the District office.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 7-30-02, Amended 4-24-06.

66B-2.015 - Small-Scale Derelict Vessel Removal Projects.

Proposals shall be accepted for financial assistance for the removal of derelict vessels within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – Applications shall be submitted on a completed FIND Form No. 05-01 (Small-Scale Derelict Vessel Removal Program) (effective date 4-24-06), and FIND Form No. 01-06 (Small-Scale Derelict Vessel Removal Program – Project Cost Estimate), (effective date 4-24-06), hereby incorporated by reference and available from the District office. Applications may be submitted to the District and considered by the Board at any time during the year.

(2) The District shall only fund applicants that have identified derelict vessels to be removed and have a current bid for removal for such vessels, or have completed the removal of such vessels within the 6 months preceding the application, subject to eligibility under these program rules.

(3) The program must be sponsored by an eligible government agency or not-for-profit organization.

(4) District funding shall be limited to $20,000.00 per county, per year, provided on a reimbursement basis only. The limitation on pre-agreement expenses may be waived by the Board in accordance with subsection 66B-2.005(3), F.A.C.

(5) The eligible applicant must provide the remaining matching funds for project completion. In no case shall the District's cost-share contribution exceed 75% of the total project costs. In-house project management or administration costs are not eligible costs or matching costs.

(6) The derelict vessel must be located in the District's Waterways, as defined in Rule 66B-2.003, F.A.C. The applicant shall include a map clearly delineating the location of all vessels included in the application.

(7) The District shall be recognized when possible in all written, audio or video advertising and promotions as a participating sponsor of the program.

(8) The funding provided by the District shall only be allocated for removal of derelict vessels. The District is providing program reimbursement funds only and shall be held harmless with regards to the activities initiated by the applicant.

(9) The applicant shall be responsible for all maintenance, management, disposal and operating expenses associated with the program.

(10) Funds derived from the sale of any derelict vessels or vessel parts removed through this grant program must be reinvested into the applicant's derelict vessel removal program.

(11) The District Board shall make all final decisions concerning the provision of funding for this program.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 4-24-06, Amended 4-15-07, 3-25-08.

66B-2.016 Waterways Cleanup Events.

Proposals shall be accepted for financial assistance for the organized removal of refuse within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure: Prior to the event, a request for funding shall be submitted to the District by means of a cover letter detailing the occurrence of the cleanup, contact information, a map of the cleanup locations and the general parameters of the event. In addition, the Applicant will submit a detailed budget clearly delineating the expenditure of all District funds, as well as the overall general budget of the event. Proposals may be submitted to the District and considered by the Board at any time during the year.

(2) Availability: The District shall fund a maximum of one clean-up program per waterway, per year within a county, with exception to the provisions of items (8) through (10), below.

(3) Applicant Eligibility: The clean-up program must be sponsored by a government agency or a registered not-for-profit corporation.

(4) Funding: District funding shall be limited to $5,000.00 per waterway, per county, except for the provisions of items (8) through (10), below.

(5) The District shall be recognized in all written, on-line, audio or video advertising and promotions as a participating sponsor of the clean-up program.

(6) Funding Eligibility: The funding provided by the District shall only be allocated to reimburse the applicant for out of pocket expenditures related to specific cleanup program expenses such as trash bags, trash collection, haul and landfill fees, gloves, advertising, T-shirts, and related expenses. The funding provided by the District shall not be allocated for parties, meetings, food or beverages.

(7) The District Board shall make all final decisions concerning the provision of funding for a clean-up program.

In addition to the requirements stated above, a cleanup program implementing all of the following additional incentives will qualify for up to additional $5,000 in clean up funds.

(8) The clean-up program budget must provide equal or greater matching funds for all Navigation District funding.

(9) The applicant shall tally and report the composition and location of the waterway-related debris, with the goal to show definitive progress in the amount of refuse collected, a reduction in the overall debris in the waterway, or an increase in the number of additional waterway areas included in the clean up.

(10) For each additional $1,000 in Navigation District funding, the applicant shall coordinate a minimum of one waterway collection point or clean up area, or an applicant can conduct an additional waterway cleanup program for the waterway areas.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 3-7-11

EXHIBIT C

FLORIDA INLAND NAVIGATION DISTRICT

ASSISTANCE PROGRAM

Matching Funds Certification

Sponsor:_____

Project Title:_____ Project #:_____

I hereby certify that the above referenced project Sponsor, as of October 01, 20__, has the required matching funds for the accomplishment of the referenced project in accordance with the Waterways Assistance Program Project Agreement between the Florida Inland Navigation District and the Sponsor, dated _____.*

Project Liaison Name:_____

Project Liaison Signature:_____

Date:_____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

FIND Form No. 95-01
New 9/9/95 (revised 7-30-02)

EXHIBIT D

FLORIDA INLAND NAVIGATION DISTRICT
ASSISTANCE PROGRAM
PAYMENT REIMBURSEMENT REQUEST FORM

PROJECT NAME: _____ PROJECT #:_____

PROJECT SPONSOR: _____ BILLING #:_____

Amount of Assistance		_____
All Funds Previously Requested	-	_____
Balance Available	=	_____
Funds Requested		_____
Less Retainage (-10% unless final)	-	_____
Check Amount	=	_____
Balance Available		_____
Less Check Amount	-	_____
Balance Remaining	=	_____

SCHEDULE OF EXPENDITURES

Expense Description (Should correspond to Cost Estimate Sheet Categories in Exhibit "A")	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost

FIND - Form No. 90-14
Effective Date 7-30-02)

(NOTE: Signature Required on Page 2)

EXHIBIT D (CONTINUED)

SCHEDULE OF EXPENDITURES

Expense Description (**Should correspond to Cost Estimate Sheet Categories in Exhibit "A"**)	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost

Certification for Reimbursement: I certify that the above expenses were necessary and reasonable for the accomplishment of the approved project and that these expenses are in accordance with Exhibit "A" of the Project Agreement. *

Project Liaison

Date

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT E

FLORIDA INLAND NAVIGATION DISTRICT

ASSISTANCE PROGRAM

Project Completion Certification
http://www.aicw.org/closeout_wap.jsp

Sponsor:_____

Project Title:_____ Project #:_____

I hereby certify that the above referenced project was completed in accordance with the Assistance Program Project Agreement between the Florida Inland Navigation District and _____, dated _____, 20_____, and that all funds were expended in accordance with Exhibit "A" and Paragraph 1 of the Project Agreement. *

Project Liaison Name:_____

Project Liaison Signature:_____

Date:_____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

FIND Form No. 90-13
(Effective Date: 12-17-90, Revised 7-30-02)

EXHIBIT F

ASSISTANCE PROGRAM PROJECT
QUARTERLY STATUS REPORT
http://www.aicw.org/wapapp_pdf.jhtml?method=view&wapapp_pdf.id=1

PROJECT NO. _____

PROJECT TITLE: _____

PROJECT SPONSOR: _____

REPORT PERIOD			
Oct 1-DEC 15____;	Dec 15-Mar 1___ ;	Mar 1-June 15___ ;	June 15-Sep 1___
Report Due: **(Dec 30)**	**(March 15)**	**(June 30)**	**(Sep 15)**

WORK ACCOMPLISHED:

PROBLEMS ENCOUNTERED:

PERCENTAGE COMPLETION:

OTHER NOTABLE ITEMS:

Form No. 95-02
(Effective Date: 7-30-02)

EXHIBIT G

ASSISTANCE PROJECT SCHEDULE

OCTOBER 2012 - Project Agreement Executed, Project Initiates.

DECEMBER 30, 2012 - First Quarterly Report Due.

MARCH 15, 2013 - Second Quarterly Report Due.

JUNE 30, 2013 - Third Quarterly Report Due.

SEPTEMBER 15, 2013 - Fourth Quarterly Report Due.

DECEMBER 30, 2013 - Fifth Quarterly Report Due.

MARCH 15, 2014 - Sixth Quarterly Report Due.

JUNE 30, 2014 - Seventh Quarterly Report Due.

NOTE: If the project will not be completed and all close out paperwork submitted by September 1st, a request for a 1-year extension of the completion date of the project should be submitted with the quarterly report.

SEPTEMBER 01, 2014 - Closeout paperwork due.

SEPTEMBER 30, 2014 - District finishes processing closeout paperwork, performs project inspection and submits final reimbursement check with check presentation to sponsor.

***NOTE: ANY MODIFICATIONS** to the PROJECT shall require advance notice and prior written approval of the District. The appropriate timing for modifications to the project cost estimate, Exhibit A, would be after receipt of bids.*

***NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit B may result in revocation of this agreement pursuant to Paragraph 13 of the project agreement.**

EXHIBIT H

http://www.aicw.org/bids.jhtml?method=listByCat_id&bids.cat_id=4

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

RESOLUTION NO. 153-2012 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing a Contract with Applied Technology & Management, Inc. in the Amount of $79,312, to Provide Field Investigations, Preliminary Design, and Permitting Services, (Phase I), for the Town of Palm Beach Waterway Project in the Lake Worth Lagoon, and Establishing a Total Task Budget of $84,000.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated October 23, 2012, from H. Paul Brazil, P.E., Director of Public Works
- Resolution No. 153-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Award Contract for Phase I of the Town of Palm Beach Waterway Project in the Lake Worth Lagoon
Resolution No. 153-2012

Date: October 23, 2012

STAFF RECOMMENDATION

Town staff recommends that Town Council approve Resolution No. 153-2012 authorizing the contract for Lake Worth Lagoon Waterway Dredging Field Investigations, Preliminary Design, and Permitting to Applied Technology & Management, Inc. (ATM) for the hourly, not-to-exceed, fee of $79,312, and establishing a total task budget of $84,000.

GENERAL INFORMATION

If the Town Council chooses to proceed with the Florida Inland Navigation District (FIND) grant agreement presented previously (Resolution No. 152-2012), then it will be necessary to retain a consultant to complete field investigations, prepare the preliminary design permit drawings, and process FIND reimbursement documents. This is Phase I of this project.

ATM has prepared the initial FIND application and conceptual design. Staff recommends retaining the same firm for the next phase of work.

FUNDING/FISCAL IMPACT

We have received an hourly, not to exceed proposal for Phase I for $79,312. Staff recommends establishing an overall budget of $84,000 for this phase of work. This project was not budgeted, so Town Council approval of this item should include appropriation of $84,000 from the General Fund Contingency account.

PURCHASING REVIEW

This item has been reviewed by the Purchasing Division and approved as recommended.

TOWN ATTORNEY REVIEW

The resolution for this item is in a standard format that has been previously reviewed and approved by the Town Attorney.

RW

Attachment

cc: Jane Struder, Director of Finance
Robert Weber, Coastal Coordinator

RESOLUTION NO. 153-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING A CONTRACT WITH APPLIED TECHNOLOGY & MANAGEMENT, INC. IN THE AMOUNT OF $79,312, TO PROVIDE FIELD INVESTIGATIONS, PRELIMINARY DESIGN, AND PERMITTING SERVICES, (PHASE I), FOR THE TOWN OF PALM BEACH WATERWAY PROJECT IN THE LAKE WORTH LAGOON, AND ESTABLISHING A TOTAL TASK BUDGET OF $84,000.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town Council of the Town of Palm Beach hereby authorizes a contract to Applied Technology & Management, Inc. in the amount of $79,312, providing field investigations, preliminary design, and permitting services, Phase I, for the Town of Palm Beach Waterway Project in the Lake Worth Lagoon, and establishes a total task budget of $84,000.

Section 2. The Town Manager is hereby authorized and directed to execute this contract on behalf of the Town of Palm Beach for the Town of Palm Beach Waterway Project in the Lake Worth Lagoon.

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 completion of the said project work, including any necessary change order work as recommended by the Public Works Director.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Town Council President
	_____
	Robert N. Wildrick, Council President Pro Tem
	_____
	William J. Diamond, Town Council Member
	_____
ATTEST:	Richard M. Kleid, Town Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Update on Par 3 Clubhouse and Funding.

Presenter

H. Paul Brazil, Director of Public Works

Supporting Documents

- Memorandum dated November 2, 2012, from H. Paul Brazil, P.E., Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, P.E., Director of Public Works

Re: Par 3 Clubhouse Project Update

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that Town Council review this project update on the progress of pre-construction services to date, and approve the acceptance of additional donations from the Par 3 Foundation.

GENERAL INFORMATION

Based upon the Town Council approval at the September 11, 2012 meeting, Town staff has worked with the Architect (Smith & Moore) and Construction Manager (Hedrick Brothers Construction) on the pre-construction services. The design development for the project has been completed and the review of that design is underway by the Construction Manager and Town staff. The pre-construction schedule includes a milestone at the end of November to have the 90% construction documents completed, to allow for the development of the final project cost estimate which will be the Guaranteed Maximum Price (GMP).

The schematic design phase report indicated that an increase to the project budget is necessary to accomplish all of the basic project requirements. At the April 10, 2012, Town Council meeting, a proposal from the Par 3 Foundation, Inc. was approved for pursuing the construction of the new clubhouse. At that meeting the Town Council agreed that all necessary project funds beyond the Town's commitment were to be raised by the Par 3 Foundation. Since the Par 3 Foundation has committed to fund any difference between the preliminary budget and the final GMP budget, there will be no additional costs incurred by the Town. The final GMP budget will be submitted for the Town Council's approval at the February 12, 2013, Town Council meeting.

Along with additional cash donations from the Foundation, a variety of donated building materials and services have also been pledged to the project. Staff anticipates these items will be finalized in the near future and included in the development of the final GMP budget. The Town Council action had previously authorized acceptance of the donations for this project, and a summary of total donations will be provided to the Town Council when the CMAR construction

contract award is made at the February 12, 2013 Town Council meeting. These donations as received (in-kind or cash) will cumulatively increase the final project budget to be presented for approval at that meeting.

FUNDING/FISCAL IMPACT

Since all costs associated with any increase in the project budget will be paid for by the Par 3 Foundation, there is no additional fiscal impact to the Town.

cc: Jay Boodheshwar, Director of Recreation
Eric Brown, P.E., Assistant Director of Public Works
Jonathon Moore, Smith & Moore
Robin Lunsford, Hedrick Brothers Construction
Par 3 Foundation

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Update Regarding Projects at the Town Docks.

Presenter

Jay Boodheshwar, Director of Recreation and Special Projects

Supporting Documents

- Memorandum Dated November 2, 2012, from Jay Boodheshwar, Director of Recreation and Special Projects, and Paul Brazil, Director of Public Works

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects
H. Paul Brazil, Director of Public Works

Re: Town Docks Improvement Projects

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends Town Council direct staff to move forward with the bidding process to upgrade the electrical power supply at the Australian Dock and requests direction for addressing structural concerns with the Australian dock house.

GENERAL INFORMATION

At the April 10, 2012, Town Council meeting, a contract with Kimley Horn and Associates (KHA) was approved for design and bid phases serves related to upgrading the electrical service at the Australian Dock and foundation rehabilitation at the Australian and Brazilian dock houses.

KHA was tasked with preparing electrical plans and specifications for the conversion of five (5) power pedestals from 120/208V, three-phase to 480V, three-phase and for the conversion of three (3) other power pedestals from 120/240V, single phase to 120/208V, three-phase power. After thorough research and numerous coordination meetings with staff, it has been determined that seven (7) pedestals can be converted to 480V, three-phase power on the Australian Dock, which will provide more power than originally anticipated at these slips. Plans are complete and ready for bidding. The opinion of probable cost (OPC) is $182,265, which includes a 10% contingency and FPL service charges. If we choose to utilize KHA for construction phase inspection services, it will be on the order of $10,000 in additional costs.

KHA was also tasked with preparing plans and specifications for repairing the foundations of the Brazilian and Australian dock houses. Varying degrees of damage have occurred due to the age of these structures and the constant exposure to the extremely salty environment. Both of these dock houses sit above water. Their foundations are submerged during high tides. KHA has developed a plan for addressing both facilities, utilizing the most cost effective methods. The Australian dock house is in need of more repair than the Brazilian. The OPC for Brazilian is $25,000 and $57,100 for Australian. Both estimates include a 10% contingency. Inspection services by KHA would be an additional $19,000 for both facilities.

Staff plans on moving forward with the repair of the Brazilian dock house foundation, but would like feedback on the Australian structure before proceeding. Staff believes it is worth giving consideration

(from a cost savings perspective) to rebuilding the Australian structure upland, using part of the footprint of the D-15 pump station, which is being removed as a part of the pump station improvements in Lakeside Park. In addition to the foundation issues, we have recently learned that the flat roof of this building will need to be replaced soon and we may have potential repairs to address from previous termite damage.

There is one other long-term issue to consider. When it is time to eventually re-build this structure, it will cost considerably more to do so over water due to the special foundation and pilings that would be required. Because of these concerns, staff feels it is important to weigh the pros and cons of repairing vs. rebuilding before spending funds on a structure that will eventually be demolished. A decision is required soon, to allow staff the necessary time to make the repairs or design and build a new structure before the damage increases to an unsafe level. The preliminary estimate for building a new concrete structure upland is approximately $450,000.

The current capital improvements schedule identifies 2022 as the first year when we will need to begin the rebuilding process of the docks. An assessment will be completed in 2016/17 to identify which dock will need to be replaced first, second, and third. If a complete reconfiguration of the marina is preferred by Town Council, the rebuilding sequence will probably change.

FUNDING/FISCAL IMPACT

The Town Docks capital project account has sufficient funds to address the approximate $192,265 cost associated with the electrical upgrades at the Australian Dock. If Council chooses to repair or replace the Australian dock house, an appropriation from the Recreation contingency fund will be required at a future date.

SPECIAL CONSIDERATIONS

In keeping with our commitment of open communications with the Royal Park Home Owners' Association, staff has provided a general briefing on these two projects and has informed the Association of Town Council's consideration at the November 15 meeting.

c: Jane Struder, Director of Finance
Eric Brown, Assistant Director of Public Works
Jim Bowser, Town Engineer
Mike Roach, Project Engineer
Lynda Cummings, Purchasing Agent
Kenneth Kooyenga, Dockmaster
Royal Park Homeowner's Association

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Regular Agenda - New Business

Agenda Title

Annual Report of Delinquent Accounts.

Presenter

Jane Struder, Director of Finance

Supporting Documents

- Memorandum Dated November 2, 2012, from Jane Struder, Finance Director
- Delinquent Accounts
- EMS Write-Offs
- Business Tax Recipt Write-Offs

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jane Struder, Finance Director

Re: Status Report of Delinquent Accounts

Date: November 2, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council authorize staff to write off the balances indicated in the report and summarized below:

Type of Charge	Write off Amount	FY2012 Revenue Collected	% of Write off vs. Total Revenue
EMS Charges	$11,818.87	$462,107.83	2.5%
Business Tax Receipts	35,905.47	625,778.66	5.7%
Parking Tickets (FY2009)			
Tickets	48,085.00	742,468.22	6.5%
Penalties	$95,840.00	$256,855.01	37.3%
Total	**$191,649.34**	**$2,087,209.72**	**9.2%**

GENERAL INFORMATION

Status of Delinquent Accounts - Year End Update

Attached is the September 30, 2012, Status of Delinquent Accounts report for your review. This report includes outstanding code enforcement liens and fire prevention fees. The total amount of delinquent accounts on this report equals $2,672,741.44. Most of the balance is made up of code enforcement liens. The numerous small amounts under the heading *Code Enforcement Liens* represent code enforcement administrative fees. These fees are an assessment of the cost associated with processing a case where the Town prevails before the Code Enforcement Board at the initial finding of violation and issuance of an order of the Board.

Overall, aside from the code enforcement liens, the fire prevention receivables are current and the property has been liened in the Notice of Abatement case. This delinquent account report is prepared monthly and distributed to the Planning, Zoning and Building, Public Works, Fire-Rescue and the Police Departments to monitor for collection opportunities.

EMS Collections

Attached to this memorandum is a delinquent account report requesting the authority to write off $11,818.87 in uncollectible EMS fees. The collection process has been followed and all notices have been sent. The list contains the account number, the balance on the account, and the reason for the write off. The name of the patient is not included because the Town is only able to release "minimally necessary" information to the public regarding these accounts due to HIPPA regulations.

In 2012, we contracted with National Recovery Agency (NRA) to collect the delinquent EMS and other outstanding accounts. Through September 30, 2012, accounts totaling $112,785.22 have been referred to NRA for collection.

The total amount due on EMS accounts is shown below. The amounts below include the accounts that are requested to be written off in the amount of $11,818.87.

Total amount due on EMS accounts as of September 30, 2012: $238,263.67
Total amount of delinquent accounts as of September 30, 2012: $208,097.20
The collection rate for the FY2012 is: 87.79%
Total revenue from EMS fees for FY2012: $477,169.10.

Parking Tickets

The Town has used a collection agency, Enforcement Technology (ET) to collect on delinquent and out-of-state parking tickets since 2004. During FY12, their efforts to collect on delinquent tickets have produced $71,777 in additional parking ticket revenue, an increase from $76,119 in FY11. ET has been paid $28,710 for their efforts during the year.

Revenues from parking tickets and associated penalties for FY12 were $275,015 higher than FY11. The number of parking tickets issued in FY12 increased by 5.3% and total fines issued increased by 50% due to the increase in the fine from $35 to $60 for most tickets.

The collection rate for FY2010 parking tickets is 88%, for FY2011 it is 89% and for FY2012 thus far the rate is 86%.

Last year, Town Council authorized staff to write off tickets issued during fiscal year 2008. We are requesting that the Town Council authorize staff to write off outstanding parking tickets and penalties issued prior to September 30, 2009, totaling $143,925. This total consists of original tickets issued in the amount of $48,085 and $95,840 in penalties. These tickets have been sent to the collection agency and all efforts have been made to collect these tickets. The collection agency will continue to pursue these outstanding tickets.

The chart on the next page compares FY2011 vs. FY2012 write off and receivable balances.

jls
cc: Department Directors
John C. Randolph, Town Attorney

Comparison of FY2011 vs. FY2012 Receivable Report

Write off Amounts

Type of Charge	FY2011	FY2012
EMS Charges	$11,971	$11,819
Business Tax Receipts	$0	$35,905
Code Enforcement Fees	$1,200	$0
Newsrack Fees	$150	$0
Parking Tickets	$162,039	$143,925

Balance of Delinquent Accounts

Type of Charge	FY2011	FY2012
Code Enforcement Liens	$1,964,928	$2,669,753
Notice of Abatement	$0	$1,526
Fire Prevention Fees	$275	$1,462
EMS Charges	$168,683	$238,264
Parking Tickets		
Tickets	$212,287	$228,102
Penalties	$413,445	$390,831

Revenues from above sources

Type of Charge	FY2011	FY2012
Code Enforcement Liens	$592,796	$248,450
Business Tax Receipts	$694,373	$625,779
Special Assignment Overtime - Police	$630,086	$1,078,852
Alarm Fees	$130,992	$150,319
Fire Prevention Fees	$199,690	$212,103
EMS Fees	$382,886	$462,108
Parking Tickets and Penalties	$724,308	$999,323

Town of Palm Beach
Delinquent Accounts
10/31/2012

Name	Address	Case Number	Principal Due	Penalty/ Interest Due	Total Due	Date of Lien	Action Taken
Code Enforcement Liens							
Robert & Louisa Dean	232 Cherry Lane	Case #06-2042	$150.00	$0.00	$150.00	**12/29/2006**	CEB Costs 10/19/06
Robert & Beverly Lowden	129 Chilian Ave	Case #06-2073	$150.00	$35,227.84	$35,377.84	**04/12/2007**	Fine not reduced by CEB
Erik Gilbertson	151 Chilean Ave	Case #07-2089	$150.00	$498,750.00	$498,900.00	**01/31/2008**	Daily Running Fine of $250.00 started 05/17/07
Philip Steinberg	1640 South Ocean Blvd	Case #07-2230	$250.00	$0.00	$250.00	**04/24/2008**	Water Violation Fines $200 - CEB Costs $300
Susan Gibson- Case 1	226 Pendleton Ave	Case #07-2277	$150.00	$43,250.00	$43,400.00	**08/11/2010**	Also has daily running fine under this case # 07-2277
Susan Gibson - Case 2	226 Pendleton Ave	Case #07-2277	$0.00	$460,000.00	$460,000.00	**08/11/2010**	Daily Running Fine of $250.00 started 10/18/07
Violet Alexander	259 Oleander Ave	Case #07-2363	$150.00	$4,600.00	$4,750.00	**06/02/2008**	Fine reduced by CEB from $9500.00
Philip Steinberg	1640 S Ocean Blvd	Case #07-2385	$450.00	$0.00	$450.00	**04/24/2008**	Water Violation Fines $200 - CEB Costs $150
159 Sunset Ave LLC	159 Sunset Ave	Case #07-2398	$250.00	$0.00	$250.00	**04/24/2008**	Water Violation Fines $100 - CEB Costs $150
E. Nordin Gilbertson	151 Chilian Ave	Case #08-2478	$150.00	$410,500.00	$410,650.00	**07/31/2008**	Daily Running FIne of $250.00 Started 05/02/08
C.J.'s Simply Gourmet Inc	235 Sunrise Avenue	Case #08-2497	$400.00	$0.00	$400.00	**07/31/2008**	Fine of $250.00: CEB Cost of $150.00
C.J.'s Simply Gourmet Inc	235 Sunrise Avenue	Case #08-2498	$400.00	$0.00	$400.00	**07/31/2008**	Fine of $250.00: CEB Cost of $150.00
C.J.'s Simply Gourmet Inc	235 Sunrise Avenue	Case #08-2499	$150.00	$500.00	$650.00	**07/31/2008**	Fine of $500.00: CEB Cost of $150.00
C.J.'s Simply Gourmet Inc	235 Sunrise Avenue	Case #08-2500	$150.00	$500.00	$650.00	**07/31/2008**	Fine of $500.00: CEB Cost of $150.00
Charles W. Smith	242 Cherry Lane	Case #08-2585	$0.00	$16,000.00	$16,000.00	**06/08/2010**	Fine: mtg. holder in foreclosure process
T & P Pavers - xxxxxxx	1485 Via Manana	Case #09-2610	$150.00	$250.00	$400.00	**collections**	Fine of $250.00 & Ceb Costs of $150.00
Lawrences Rule, Jr.	2283 W. Ibis Isle Road	Case #09-2652	$150.00	$292,100.00	$292,250.00	**08/08/2009**	CEB Costs: Daily fine of $250.00 started 8/18/09
Paramount Church Inc	139 N. County Road	Case #09-2665	$150.00	$51,650.00	$51,800.00	**06/24/2011**	CEB costs paid: $100 day fine starts 5/31/11
Joseph Cain	893 South County Road	Case #10-2691	$150.00	$1,500.00	$1,650.00	**02/26/2010**	Fine of $1500.00 and CEB Costs
Susan C Lee	287 Pendleton Ave	Case #10-2706	$150.00	$233,500.00	$233,650.00	**06/02/2010**	Daily Fine of 250.00 started 4/10/10:CEB costs
Robert A & Louisa A Dean	232 Cherry Lane	Case #10-2708	$150.00	$750.00	$900.00	**06/02/2010**	Daily Fine of $75.00 started 4/10/10:CEB costs
Florida Capital Management	237 Brazilian Ave	Case #10-182	$150.00	$24,600.00	$24,750.00	**10/13/2010**	Daily Fine of $250.00 started 8/3/10
Gail Trinka	2300 South Ocean Blvd	Case #10-418	$150.00	$26,000.00	$26,150.00	**12/16/2010**	Fine of $250.00 started 9/25/10:CEB Costs
E Nordin Gilbertson	151 Chilean Ave	Case #11-105	$150.00	$3,200.00	$3,350.00	**04/27/2011**	$150 CEB on 3/17 - $100 per day 4/1/11
Charles W. Smith	242 Cherry Lane	Case #11-200	$150.00	$115,350.00	$115,500.00	**06/24/2011**	$150 CEB Paid: $250 per day
Gail Trinka	2300 S Ocean Blvd	Case #11-548	$150.00	$204,000.00	$204,150.00	**06/17/2011**	CEB Cost 5/19/11: $500 per day
Salomon & Ellen Bitton	142 Via Palma	Case #11-641	$150.00	$37,625.00	$37,775.00	**08/09/2011**	$150 CEB$125 per day 06/25/11
Benjamin Casas	2145 So. Ocean Phipps	Case #11-729	$275.00	$0.00	$275.00	**collections**	$150 CEB 7/21/11 & $125 Alcoholic Fine
Salomon & Ellen Bitton	142 Via Palma	Case #11-778	$150.00	$14,500.00	$14,650.00	**09/29/2011**	$150.00 CEB + $250 per day 8/27/11
Estate of Gertrude Maxwell	1700 So. Ocean Blvd	Case #11-1024	$150.00	$45,750.00	$45,900.00	**09/27/2011**	$150.00 CEB $250 per day 9/1/11
Fiori	350 South County Rd #100.00	Case #11-1241	$150.00	$0.00	$150.00	**collections**	$150.00 CEB on 9/15/11
B 17 LLC	220 Onondaga Ave	Case #11-1539	$150.00	$125.00	$275.00	**04/13/2012**	$150 CEB on 01/19/12 - $125 Fine
Robert Atlee Barnes Jr	335 Seaspray Ave	Case #11-1553	$150.00	$250.00	$400.00	**collections**	$150 CEB on 12/15/11 and $250 fine
Paolo Bergmann Tr	267 Atlantic Ave	Case #11-1594	$150.00	$425.00	$575.00	**04/13/2012**	$150 CEB on 01/19/12
Reynco Inc	242 Colonial Lane	Case #11-1629	$150.00	$125.00	$275.00	**06/20/2012**	$150 CEB on 01/19/12 - $125 Fine
Anthony David Hill	258 Wells Road	Case #11-1727	$150.00	$250.00	$400.00	**collections**	$150 CEB on 1/19/12 - $250 Fine
Robert &Beverly Lowden	129 Chilean Ave	Case #12-16	$150.00	$51,500.00	$51,650.00	**04/27/2012**	$150 CEB on 3/22 - $250 per day 4/07/12

Paul Pomfret	168 Reef Road	Case #12-19		$150.00	$125.00	$275.00	**6/13/2012**	$150 CEB on 2/23 - $125 water Fine
Armenta Landscape	2875 S. Ocean Blvd	Case #12-86		$150.00	$250.00	$400.00	**collections**	$150 CEB on 3/22 - $250 water fine
James R Thompson Est	211 Caribbean Road	Case #12-315		$150.00	$45,500.00	$45,650.00	**5/29/2012**	$150 CEB on 4/19 $250 per day starts 5/1/12
Christopher Kaufmann	434 Seaspray Ave	Case #12-389		$150.00	$0.00	$150.00	6/28/2012	$150 CEB on 5/17/12
Alan Bohane Sotheby's	340 Royal Poinciana Way	Case #12-499		$150.00	$0.00	$150.00	collections	$150 CEB on 6/21/12
Mark Remson	2270 Ibis Isle Road	Case #12-725		$1,000.00	$0.00	$1,000.00		$150 CEB on 6/21/12
Tucker's Tree Service	1080 N Ocean Blvd	Case #12-729		$275.00	$0.00	$275.00	collections	$150 CEB on 6/21/12 and $125 Fine
BOAG	264 Bahama Lane	Case#12-761		$150.00	$15,600.00	$15,750.00	Attorney	$150 CEB and $250 per day starts 8/1/12
Greg & Karen Golnick	146 Seabreeze Ave	Case #12-842		$150.00	$0.00	$150.00		$150.00 CEB on 10/18/12
Palm Beach Parke Center	440 Royal Palm Way	Case #12-854		$0.00	$22,500.00	$22,500.00	9/5/2012	$250 per day start 8/1/12
Cornelia Lorentzen	353 Seaspray Ave	Case #12-893		$150.00	$0.00	$150.00		$150 CEB on 9/20/12
Danielle Debenedictis	408 Chilean Ave	Case #12-1017		$150.00	$0.00	$150.00		$150 CEB on 9/20/12
Tamara Jean Fisher	164 Seminole Ave	Case #12-1093		$150.00	$0.00	$150.00		$150 CEB on 9/20/12
Margaret K Hoffmeier	155 Root Trail	Case #12-1095		$150.00	$3,100.00	$3,250.00		$150 CEB on 9/20/12 $100 daily Fine
Marina Petrou	221 Oleander Ave	Case #12-1112		$150.00	$0.00	$150.00		$150 CEB on 9/20/12
218 Royal Palm Way LLC	218 Royal Palm Way	Case #12-1127		$150.00	$0.00	$150.00		$150 CEB on 10/18/12
Walter Jackson	2252 Ibis Isle Rd W	Case #12-1172		$150.00	$0.00	$150.00		$150 CEB on 10/18/12
Stephen Bonanno	302 S. County Rd	Case #12-1245		$150.00	$0.00	$150.00		$150 CEB on 10/18/12
bold xxxxxxx								
Can not be liened		**Total Code Enforcement Liens**		**$9,900.00**	**$2,659,852.84**	**$2,669,752.84**		
Notice of Abatement								
Estate of Gertrude Maxwell	1700 South Ocean Blvd			$1,526.10	$0.00	$1,526.10	Attorney	Property Liened by Attorney
		Total Police - Notice of Abatement		**$1,526.10**	**$0.00**	**$1,526.10**		
Fire Prevention								
Deutsch Bank	350 Royal Palm Way 2nd Flr		12071015504	$12.50	$0.00	$12.50		Original Amt $137.50 paid $125.00
Deutsch Bank	350 Royal Palm Way 5th Flr		12071015502	$125.00	$12.50	$137.50		
Small and Small	420 Royal Palm Way #310		12071215503	$100.00	$0.00	$100.00		
Samuel Lutz	448 Palo Alto Drive		1207174503	$100.00	$0.00	$100.00		
McCarty's Consulting	50 Cocoanut Row #115		12072315501	$100.00	$0.00	$100.00		
Citibank FSB	400 Royal Palm Way #110,200		12073115502	$100.00	$0.00	$100.00		
Kruse Come	400 Royal Palm Way #302		12073115507	$200.00	$0.00	$200.00		
HRE Capital	400 Royal Palm Way #206		12080115501	$100.00	$0.00	$100.00		
Oleander Apts	212 Oleander Avenue		12080815502	$100.00	$0.00	$100.00		
IL Lugano	300 Seminole Avenue		12080815500	$100.00	$0.00	$100.00		
Barrymore Apts	150 Australian Ave		12080915502	$100.00	$0.00	$100.00		
Casa De Jose	252 Oleander Avenue		12081015500	$100.00	$0.00	$100.00		
Oleander Apts	234 Oleander Avenue		12081015504	$100.00	$0.00	$100.00		
UBS Wealth Management AG	440 Royal Palm Way		12081015502	$125.00	$0.00	$125.00		
		TOTAL FIRE PREVENTION ACCOUNTS		**$1,450.00**	**$12.50**	**$1,462.50**		
		Total Monies Due to the Town		**$12,876.10**	**$2,659,865.34**	**$2,672,741.44**		

Proposed 2012 Town Council EMS Write-offs

Account	Reason	Amount
6226	deceased	$ 200.00
4874	deceased	471.90
5889	deceased	73.52
6226	deceased	200.00
6618	unbillable	678.80
6564	deceased	150.00
5802	WC - notes in system	565.52
6698	bankruptcy discharge	681.20
5710	NRA suspension-out of US	508.94
5790	NRA suspension-out of US	468.39
5796	NRA suspension-deceased	491.20
5632	NRA suspension--legal alert	490.40
817	deceased	1,259.00
6244	deceased	57.66
6375	wc - health issues/limited income	200.80
6303	deceased	162.14
5312	deceased	77.11
9595	deceased	807.60
6876	deceased	89.47
6713	finance charge writeoff	2.95
1750	deceased	175.00
6550	WC notes in system	729.20
6965	deceased	807.60
5889	deceased	74.00
6466	out of country pt/no response	487.10
5235	not working, FMLA	229.20
6261	Out of country address	490.50
6453	Homeless WC	477.27
6866	out of country address	712.40
	Total	$ 11,818.87

TOWN OF PALM BEACH

Planning, Zoning & Building Department

MEMORANDUM

To: Jane Struder, Finance Director

From: Veronica Close, Assistant Director of Planning, Zoning & Building VC

Re: Billing Errors and Uncollected Funds for Business Tax Receipts 2008 - 2011

Date: October 26, 2012

Pursuant to Administrative Procedure No. 1-12-2, Staff recommends the Town write off $35,905.47 in uncollected or incorrectly billed business tax receipt fees and penalty fees for the period including fiscal years 2008-2011.

Business Tax Receipt renewal notices are generated annually for the upcoming fiscal year. In years past, staff would send reminder notices and/or work with the Code Enforcement Division in an effort to collect unpaid renewal and penalty fees. Often, through investigation, it would be determined that the business had closed or moved. Those renewal notices generated for businesses that had closed or moved are considered billing errors, even though the Town would typically not know until after the fact.

During fiscal year 2012, staff worked to resolve these billing errors and uncollected fees from fiscal years 2008 through 2011.

In an effort to become more efficient and streamline the process for staff and business owners, staff has also modified the renewal notice form to include an affidavit to be signed and returned to the Town when a business has closed or moved. This makes it much easier for licensees to notify us when they have moved, so that we can make the necessary changes in the Eden software system as soon as information is received.

Attachments
VC: dam

cc: John Page, Director of Planning, Zoning & Building
Debby Morakis, Development Review Specialist

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
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E-Mail: pzb@townofpalmbeach.com • Website: www.townofpalmbeach.com
Recycled Paper

Cancellations in FY12
BTR's effective for Fiscal Years 2008-2011

License #	Activity Status	Activity #	Activity Date	Fee Effective Date	Activity Code	Name	Billed Amount	Paid Amount	Fee Amount	Penalty Amount	A/R
00039626	candd	00001648	9/30/2007	10/1/2007	busren	RESTAURANT 160 LLC	$0.00	$0.00	$738.00	$184.50	$922.50
00033181	candd	00002451	9/30/2007	10/1/2007	busren	ROYAL 160 LLC	$0.00	$0.00	$571.70	$142.93	$714.63
00033183	candd	00002452	9/30/2007	10/1/2007	busren	ROYAL 160 LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00039186	candd	00002788	9/30/2007	10/1/2007	busren	ELEMENTARY ETIQUETTE SOCIETY	$0.00	$0.00	$173.00	$43.25	$216.25
00039626	candd	00004514	9/30/2008	10/1/2008	busren	RESTAURANT 160 LLC	$0.00	$0.00	$738.00	$184.50	$922.50
00039848	candd	00004516	9/30/2008	10/1/2008	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$1,002.00	$250.50	$1,252.50
00039849	candd	00004517	9/30/2008	10/1/2008	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$673.00	$168.25	$841.25
00033181	candd	00004556	9/30/2008	10/1/2008	busren	ROYAL 160 LLC	$0.00	$0.00	$571.70	$142.93	$714.63
00033183	candd	00004557	9/30/2008	10/1/2008	busren	ROYAL 160 LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00100982	candd	00004735	9/30/2008	10/1/2008	busren	SHEFFIELD INTERNATIONAL FINANCE CORPORAT	$0.00	$0.00	$348.00	$87.00	$435.00
00038044	candd	00004840	9/30/2008	10/1/2008	busren	HANDMAIDENS INTERNATIONAL SERVICES INC	$0.00	$0.00	$348.00	$87.00	$435.00
00101318	candd	00005049	9/30/2008	10/1/2008	busren	STROMBERG & TARONE PLC	$0.00	$0.00	$348.00	$87.00	$435.00
00039850	candd	00006022	9/30/2008	10/1/2008	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$173.00	$43.25	$216.25
00039186	candd	00006027	9/30/2008	10/1/2008	busren	ELEMENTARY ETIQUETTE SOCIETY	$0.00	$0.00	$173.00	$43.25	$216.25
00039626	candd	00007184	9/30/2009	10/1/2009	busren	RESTAURANT 160 LLC	$0.00	$0.00	$738.00	$184.50	$922.50
00039848	candd	00007187	9/30/2009	10/1/2009	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$1,002.00	$250.50	$1,252.50
00039849	candd	00007188	9/30/2009	10/1/2009	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$673.00	$168.25	$841.25
00033181	candd	00007226	9/30/2009	10/1/2009	busren	ROYAL 160 LLC	$0.00	$0.00	$571.70	$142.93	$714.63
00033183	candd	00007227	9/30/2009	10/1/2009	busren	ROYAL 160 LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00038044	candd	00007378	9/30/2009	10/1/2009	busren	HANDMAIDENS INTERNATIONAL SERVICES INC	$0.00	$0.00	$348.00	$87.00	$435.00
00034445	candd	00007412	9/30/2009	10/1/2009	busren	FLORIDA CONSULTING & MANAGEMENT INC	$0.00	$0.00	$173.00	$43.25	$216.25
00957645	candd	00007487	9/30/2009	10/1/2009	busren	MCPHERSON-BARRETT PHOTOGRAPHY INC	$0.00	$0.00	$173.00	$43.25	$216.25
00957632	candd	00007488	9/30/2009	10/1/2009	busren	MATTHEWS VENTURES LLC	$0.00	$0.00	$281.00	$70.25	$351.25
00100982	candd	00007590	9/30/2009	10/1/2009	busren	SHEFFIELD INTERNATIONAL FINANCE CORPORAT	$0.00	$0.00	$348.00	$87.00	$435.00
00100879	candd	00007614	9/30/2009	10/1/2009	busren	ECHELON ENGINEERING & CONSTRUCTION INC	$0.00	$0.00	$281.00	$70.25	$351.25
00957646	candd	00007637	9/30/2009	10/1/2009	busren	MERKLE APPRAISAL GROUP LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00101318	candd	00007759	9/30/2009	10/1/2009	busren	STROMBERG & TARONE PLC	$0.00	$0.00	$348.00	$87.00	$435.00
00039850	candd	00008629	9/30/2009	10/1/2009	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$173.00	$43.25	$216.25
00039186	candd	00008633	9/30/2009	10/1/2009	busren	ELEMENTARY ETIQUETTE SOCIETY	$0.00	$0.00	$173.00	$43.25	$216.25
00957601	candd	00008706	9/30/2009	10/1/2009	busren	MARBESS INC	$0.00	$0.00	$348.00	$87.00	$435.00
00101313	candd	00008716	9/30/2009	10/1/2009	busren	NHM REALTY LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00957622	candd	00008837	9/30/2009	10/1/2009	busren	THE MAR-A-LAGO CLUB LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00957671	candd	00009466	9/30/2010	10/1/2010	busren	ACTION ELECTRIC INC	$0.00	$0.00	$387.00	$96.75	$483.75
00034551	candd	00009492	9/30/2010	10/1/2010	busren	BRANCH BANKING & TRUST COMPANY	$0.00	$0.00	$1,004.00	$251.00	$1,255.00
00039006	candd	00009664	9/30/2010	10/1/2010	busren	JACKSON NATIONAL LIFE INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00100122	candd	00009688	9/30/2010	10/1/2010	busren	PENNSYLVANIA LUMBERMENS MUTUAL INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00040333	candd	00009693	9/30/2010	10/1/2010	busren	XL SPECIALTY INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00957809	candd	00009694	9/30/2010	10/1/2010	busren	GREENWICH INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00957264	candd	00009738	9/30/2010	10/1/2010	busren	JEFFERSON NATIONAL LIFE INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00957892	candd	00009789	9/30/2010	10/1/2010	busren	AMERICAN GENERAL ASSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00957817	candd	00009794	9/30/2010	10/1/2010	busren	ACE INSURANCE COMPANY OF NORTH AMERICA	$0.00	$0.00	$348.00	$87.00	$435.00
00957514	candd	00009809	9/30/2010	10/1/2010	busren	UNITED HOME LIFE INSURANCE CO	$0.00	$0.00	$348.00	$87.00	$435.00
00957529	candd	00009813	9/30/2010	10/1/2010	busren	FORT DEARBORN LIFE INSURANCE COMPANY	$0.00	$0.00	$348.00	$87.00	$435.00
00039626	candd	00009836	9/30/2010	10/1/2010	busren	RESTAURANT 160 LLC	$0.00	$0.00	$738.00	$184.50	$922.50
00039848	candd	00009857	9/30/2010	10/1/2010	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$1,002.00	$250.50	$1,252.50
00039849	candd	00009858	9/30/2010	10/1/2010	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$673.00	$168.25	$841.25
00033181	candd	00009878	9/30/2010	10/1/2010	busren	ROYAL 160 LLC	$0.00	$0.00	$571.70	$142.93	$714.63
00033183	candd	00009879	9/30/2010	10/1/2010	busren	ROYAL 160 LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00038044	candd	00010010	9/30/2010	10/1/2010	busren	HANDMAIDENS INTERNATIONAL SERVICES INC	$0.00	$0.00	$348.00	$87.00	$435.00
00100553	candd	00010031	9/30/2010	10/1/2010	busren	WINDSORTECH INC	$0.00	$0.00	$173.00	$43.25	$216.25
00034445	candd	00010076	9/30/2010	10/1/2010	busren	FLORIDA CONSULTING & MANAGEMENT INC	$0.00	$0.00	$173.00	$43.25	$216.25
00100982	candd	00010175	9/30/2010	10/1/2010	busren	SHEFFIELD INTERNATIONAL FINANCE CORPORAT	$0.00	$0.00	$348.00	$87.00	$435.00
00957645	candd	00010207	9/30/2010	10/1/2010	busren	MCPHERSON-BARRETT PHOTOGRAPHY INC	$0.00	$0.00	$173.00	$43.25	$216.25
00957632	candd	00010209	9/30/2010	10/1/2010	busren	MATTHEWS VENTURES LLC	$0.00	$0.00	$281.00	$70.25	$351.25
00957701	candd	00010218	9/30/2010	10/1/2010	busren	SCHARF BROTHERS LLC	$0.00	$0.00	$173.00	$25.95	$198.95
00957735	candd	00010220	9/30/2010	10/1/2010	busren	FLAGLER COMMUNICATIONS GROUP LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00957646	candd	00010249	9/30/2010	10/1/2010	busren	MERKLE APPRAISAL GROUP LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00100879	candd	00010261	9/30/2010	10/1/2010	busren	ECHELON ENGINEERING & CONSTRUCTION INC	$0.00	$0.00	$281.00	$70.25	$351.25
00101318	candd	00010367	9/30/2010	10/1/2010	busren	STROMBERG & TARONE PLC	$0.00	$0.00	$348.00	$87.00	$435.00
00036327	candd	00010414	9/30/2010	10/1/2010	busren	PALM BEACH INTERNATIONAL REAL ESTATE INC	$0.00	$0.00	$348.00	$87.00	$435.00

Cancellations in FY12
BTR's effective for Fiscal Years 2008-2011

00101202	candd	00010791	9/30/2010	10/1/2010	busren	SOTHEBY'S INTERNATIONAL REALTY INC	$0.00	$0.00	$173.00	$43.25	$216.25
00957647	candd	00010933	9/30/2010	10/1/2010	busren	PASCALE DUWAT GALLERIES INC	$0.00	$0.00	$401.00	$100.25	$501.25
00101041	candd	00010962	9/30/2010	10/1/2010	busren	CHATEAU DE PUPPY INC	$0.00	$0.00	$348.00	$87.00	$435.00
00001847	candd	00011047	9/30/2010	10/1/2010	busren	RAINIE INC	$0.00	$0.00	$348.00	$87.00	$435.00
00039186	candd	00011197	9/30/2010	10/1/2010	busren	ELEMENTARY ETIQUETTE SOCIETY	$0.00	$0.00	$173.00	$43.25	$216.25
00037912	candd	00011204	9/30/2010	10/1/2010	busren	CAMBOY INTERIORS PALM BEACH INC	$0.00	$0.00	$348.00	$87.00	$435.00
00039850	candd	00011234	9/30/2010	10/1/2010	busren	CJ'S SIMPLY GOURMET CATERING INC	$0.00	$0.00	$173.00	$43.25	$216.25
00032606	candd	00011239	9/30/2010	10/1/2010	busren	GOURMET GALLEY OF THE PALM BCHS INC	$0.00	$0.00	$173.00	$43.25	$216.25
00034204	candd	00011242	9/30/2010	10/1/2010	busren	RAINIE INC	$0.00	$0.00	$133.00	$33.25	$166.25
00957601	candd	00011279	9/30/2010	10/1/2010	busren	MARBESS INC	$0.00	$0.00	$348.00	$87.00	$435.00
00101313	candd	00011298	9/30/2010	10/1/2010	busren	NHM REALTY LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00957622	candd	00011331	9/30/2010	10/1/2010	busren	THE MAR-A-LAGO CLUB LLC	$0.00	$0.00	$348.00	$87.00	$435.00
00100681	candd	00011353	9/30/2010	10/1/2010	busren	SUNRISE BARBER SHOP	$0.00	$0.00	$40.00	$10.00	$50.00
00957571	candd	00011366	9/30/2010	10/1/2010	busren	SPA CARA LLC	$0.00	$0.00	$40.00	$10.00	$50.00
	candd	00014455	9/30/2010	10/1/2010	busapp	AFFIRMATIVE INSURANCE CO	$0.00	$0.00	$713.00	$0.00	$713.00
							0	$0.00	$28,880.80	$7,024.67	$35,905.47

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 17-2012 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 130, Vehicles for Hire, Certificate of Public Convenience and Necessity and Permit, Division 2, Section 130-71, Automobile Liability Insurance Requirement, by Amending Automobile Liability Insurance Requirements for Taxicab Certificates of Public Convenience and Necessity; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 17-2012 Taxi Cabs

ORDINANCE NO. 17-2012

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 130, VEHICLES FOR HIRE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMIT, DIVISION 2, SECTION 130-71, AUTOMOBILE LIABILITY INSURANCE REQUIREMENT, BY AMENDING AUTOMOBILE LIABILITY INSURANCE REQUIREMENTS FOR TAXICAB CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 130, Automobile Insurance Requirement, to read as follows:

"Sec. 130-71. Automobile liability insurance requirement.

No certificate of public convenience and necessity or permit shall be issued or continued in operation unless there is in full force and effect an insurance policy for each vehicle authorized in the amount of $1,000,000.00 combined single limit each accident with an umbrella or excess coverage of $1,000,000.00 for limousines and $125,000.00 for personal injury or accident; and $300,000.00 per occurrence; and $50,000.00 property or $300,000.00 combined single limit for taxicabs. The town shall be endorsed as an additional insured under the liability insurance required herein. The policy shall comply with all requirements of the state. The policy shall inure to the benefit of any person who shall be injured or who shall sustain damage to property

proximately caused by the negligence of a holder, his servants or agents. Satisfactory evidence of the required policy in the form of a certificate of insurance acceptable to the town shall be filed with the required application for a certificate of public convenience and shall have as insurer thereon an insurance company authorized to do business in the state. A copy of the certificate of insurance required under this section shall be filed with the required application for a certificate of public convenience and necessity or permit and at any time before expiration of the policy should the certificate of insurance indicate that the policy expires prior to the cessation of the validity of the certificate of public convenience and necessity or permit issued by the town. Evidence of renewal of the policy shall be filed with the town prior to the respective expiration dates. Failure to maintain and renew the policy shall automatically revoke the certificate of public convenience and necessity or permit issued under this section. All insurance policies provided under this section shall be subject to review and approval of the town."

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 9th day of October 2012 and for second and final reading on this 15th day of November 2012.

_____	_____
Gail L. Coniglio, Mayor	David A. Rosow, Council President
	_____
	Robert Wildrick, President Pro Tem
	_____
	William J. Diamond, Council Member
	_____
	Richard M. Kleid, Council Member
_____	_____
Susan A. Owens, MMC, Town Clerk	Michael J. Pucillo, Council Member

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 16-2012 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning, As Follows: Sections 134-787, 134-837, 134-887, 134-942, 134-997, 134-1052, 134-1352 And 134-1393 To Eliminate Municipally Owned And Operated Parks And Recreational Areas As A Permitted Use In The R-AA, R-A, R-B, R-C, R-D(1), R-D(2), Conservation And PUD Zoning Districts; Sections 134-790, 134-840, 134-890, 134-945, 134-1000, 134-1055, 134-1354 And 134-1395 To Create Municipally Owned And Operated Parks And Recreational Areas As A Special Exception Use In The R-AA, R-A, R-B, R-C, R-D(1), R-D(2), Conservation And PUD Zoning Districts; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated October 29, 2012
- Ordinance No. 16-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Proposed Modifications and Changes to Chapter 134
Ordinance No. 16-2012

Date: October 29, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Ordinance No. 16-2012, amending the Zoning Ordinance, on first reading.

PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY RECOMMENDATION

The Planning and Zoning Commission/Local Planning Agency, at its meeting of October 16, 2012, recommended by a 7-0 vote approval of Ordinance No. 16-2012 as described below.

GENERAL INFORMATION

The Town's zoning ordinance regulates municipally owned parks and recreational uses differently than other open space areas for assembly uses (such as open yards belonging to houses of worship). The changes being proposed in the attached Ordinance are intended to create uniformity between approval of new municipal parks and private open space areas. The proposed changes make municipal parks and recreational uses a "special exception" rather than a "permitted use" in the districts where they are permitted (R-AA, R-A, R-B, R-C, R-D(1), R-D(2), CONSERVATION AND PUD zoning districts). If amended as proposed, all new open space and park areas would be subject to the same approval process. The changes would provide residents in an area where a park is newly proposed with the opportunity to address any related concerns before issuance of a special exception.

If you have any questions about any of the attached information, please contact Paul Castro, Zoning Administrator, at 227-6406.

TOWN ATTORNEY REVIEW

Ordinance No. 16-2012 was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachment

PBE:jsp:pc

cc: Planning and Zoning Commission/LPA
Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
zf

ORDINANCE NO. 16-2012

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING, AS FOLLOWS: SECTIONS 134-787, 134-837, 134-887, 134-942, 134-997, 134-1052, 134-1352 AND 134-1393 TO ELIMINATE MUNICIPALLY OWNED AND OPERATED PARKS AND RECREATIONAL AREAS AS A PERMITTED USE IN THE R-AA, R-A, R-B, R-C, R-D(1), R-D(2), CONSERVATION AND PUD ZONING DISTRICTS; SECTIONS 134-790, 134-840, 134-890, 134-945, 134-1000, 134-1055, 134-1354 AND 134-1395 TO CREATE MUNICIPALLY OWNED AND OPERATED PARKS AND RECREATIONAL AREAS AS A SPECIAL EXCEPTION USE IN THE R-AA, R-A, R-B, R-C, R-D(1), R-D(2), CONSERVATION AND PUD ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

WHEREAS, after a public hearing pursuant to notice as required by law, the Town's Local Planning Agency has recommended that the Town Council amend Chapter 134, Zoning, of the Code of Ordinances, as herein set forth;

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

Section 1. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-787, Permitted uses, to read as follows:

Sec. 134-787. Permitted uses.

The permitted uses in the R-AA large estate residential district are as follows:

(1) Single-family dwellings.

(2) Essential services.

Section 2. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-837, Permitted uses, to read as follows:

Sec. 134-837. Permitted uses.

The permitted uses in the R-A estate residential district are as follows:

(1) Single-family dwellings.

(2) Essential services.

Section 3. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-887, Permitted uses, to read as follows:

Sec. 134-887. Permitted uses.

The permitted uses in the R-B low density residential district are as follows:

(1) Single-family dwellings.

(2) Essential services

Section 4. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-942, Permitted uses, to read as follows:

Sec. 134-942. Permitted uses.

The permitted uses in the R-C medium density residential district are as follows:

(1) Single-family dwellings.

(2) Two-family dwellings.

(3) Townhouses.

(4) Multi-family dwellings. (Site plan review shall be required. See article III of this chapter.)

(5) Essential services

Section 5. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-997, Permitted uses, to read as follows:

Sec. 134-997. Permitted uses.

The permitted uses in the R-D(1) moderate density residential district are as follows:

(1) Single-family dwellings.

(2) Two-family dwellings.

(3) Townhouses.

(4) Multi-family dwellings. (Site plan review shall be required. See article III of this chapter.)

(5) Essential services

Section 6. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1052, Permitted uses, to read as follows:

Sec. 134-1052. Permitted uses.

The permitted uses in the R-D(2) high density residential district are as follows:

(1) Single-family dwellings.

(2) Two-family dwellings.

(3) Townhouses.

(4) Multi-family dwellings. (Site plan review shall be required. See article III of this chapter.)

(5) Essential services

Section 7. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1352, Permitted uses, to read as follows:

Sec. 134-1352. Permitted uses.

There are no permitted uses in the C Conservation district.

Section 8. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1393, Permitted uses, to read as follows:

Sec. 134-1393. Permitted uses.

The permitted uses in the PUD planned unit development district are as follows:

(1) Planned unit development, as provided in article V of this chapter.

(2) Golf course.

(3) Single-family dwellings.

(4) Essential services.

Section 9. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-790, Special exception uses, to read as follows:

Sec. 134-790. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-AA large estate residential district are as follows:

(1) Planned unit development, PUD-4 (see article V of this chapter for standards).

(2) Public structures.

(3) Beach houses intended for the use of family and guests.

(4) Municipally owned and operated parks and recreation areas.

(5) Private social, swimming, golf, tennis and yacht clubs, and houses of worship in existence prior to January 1, 1996.

(6) Reserved.

(7) Supplemental parking, allowed only in a manner consistent with the zoning of the district in which it is located.

(8) Museums occupying buildings of unique value as historical landmarks, as determined by the landmarks preservation commission and the town council, and for which it is demonstrated that no permitted use is economically viable.

(9) Group home with up to six occupants.

(10) Foster care facility with up to six occupants.

(11) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental agencies having jurisdiction.

Section 10. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-840, Special exception uses, to read as follows:

Sec. 134-840. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-A estate residential district are as follows:

(1) Planned unit development (see article V of this chapter for standards).

(2) Public structures.

(3) Beach houses intended for the use of family and guests.

(4) Municipally owned and operated parks and recreation areas.

(5) Private social, swimming, golf, tennis and yacht clubs, and houses of worship in existence prior to January 1, 1996.

(6) Reserved.

(7) Supplemental parking, allowed only in a manner consistent with the zoning of the district in which it is located.

(8) Museums occupying buildings of unique value as historical landmarks, as determined by the landmarks preservation commission and the town council, and for which it is demonstrated that no permitted use is economically viable.

(9) Group home with up to six occupants.

(10) Foster care facility with up to six occupants.

(11) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental agencies having jurisdiction.

Section 11. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-890, Special exception uses, to read as follows:

Sec. 134-890. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-B low density residential district are as follows:

(1) Planned unit development, PUD(1) (see article V of this chapter for standards).

(2) Public structures.

(3) Beach houses intended for the use of family and guests.

(4) Public and private academic schools.

(5) Private social, swimming, golf, tennis and yacht clubs, and houses of worship in existence prior to January 1, 1996.

(6) Churches and synagogues and other houses of worship.

(7) Required off-street parking in accordance with section 134-2177(3) and supplemental parking, allowed only in a manner consistent with the zoning of the district in which it is located.

(8) Nonprofit cultural centers.

(9) Municipally owned or operated parking areas.

(10) Museums occupying buildings of unique value as historical landmarks, as determined by the landmarks preservation commission and the town council, and for which it is demonstrated that no permitted use is economically viable.

(11) Group home with up to six occupants.

(12) Foster care facility with up to six occupants.

(13) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental.

(14) Municipally owned and operated parks and recreation centers.

Section 12. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-945, Special exception uses, to read as follows:

Sec. 134-945. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-C medium density residential district are as follows:

(1) Planned unit development, PUD-2, PUD-3.

(2) Public structures.

(3) Public or private academic schools.

(4) Churches, synagogues and other houses of worship.

(5) Supplemental parking.

(6) Nonprofit cultural centers.

(7) Municipally owned or operated parking areas.

(8) Beach houses intended for the use of family and guests only.

(9) Museums occupying buildings of unique value as historical landmarks as determined by the landmarks preservation commission and the town council and for which it is demonstrated that no permitted use is economically viable.

(10) Roof-deck automobile parking.

(11) Group home.

(12) Foster care facility.

(13) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental agencies having jurisdiction.

(14) Municipally owned and operated parks and recreation areas.

Section 13. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1000, Special exception uses, to read as follows:

Sec. 134-1000. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-D(1) moderate density residential district are as follows:

(1) Planned unit development, PUD-2, PUD-3.

(2) Public structures.

(3) Public or private academic schools.

(4) Churches, synagogues and other houses of worship.

(5) Supplemental parking.

(6) Roof-deck automobile parking.

(7) Municipally owned or operated parking areas.

(8) Beach houses intended for the use of family and guests only.

(9) Group home.

(10) Foster care facility.

(11) Municipally owned and operated parks and recreation areas.

Section 14. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1055, Special exception uses, to read as follows:

Sec. 134-1055. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the R-D(2) high density residential district are as follows:

(1) Planned unit development, PUD-2, PUD-3.

(2) Public structures.

(3) Public or private academic schools.

(4) Churches, synagogues and other houses of worship.

(5) Supplemental parking.

(6) Accessory commercial uses to hotel uses.

(7) Municipally owned or operated parking areas.

(8) Beach houses intended for the use of family and guests only.

(9) Hotels.

(10) Timesharing uses.

(11) Roof-deck automobile parking.

(12) Group home.

(13) Foster care facility.

(14) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental agencies having jurisdiction.

(15) Outdoor seating for dining purposes related to hotels where administrative approval is not being requested. See section 134-1056 for additional conditions.

(16) Condo-hotels in accordance with section 134-2110.

(17) Municipally owned and operated parks and recreation areas.

Section 15. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1354, Special exception uses, to read as follows:

Sec. 134-1354. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the C conservation district are as follows:

(1) Municipally owned and operated parks and recreations areas.

(2) Essential services, excluding wireless telecommunication towers and distribution electrical substations.

Section 16. Amend ARTICLE VI, DISTRICT REGULATIONS, Section 134-1395, Special exception uses, to read as follows:

Sec. 134-1395. Special exception uses.

The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the PUD planned unit development zoning district are as follows:

(1) Private social, swimming, golf, tennis and yacht clubs.

(2) Municipally owned and operated parks and recreations areas.

Section 17. **Severability.**

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 18. **Repeal of Ordinances in Conflict.**

All other Ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

<u>Section 19.</u> Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading this ___ day of _____, 2012, and second and final reading on this _____ day of _____, 2012.

_____

Gail L. Coniglio, Mayor

_____

David A. Rosow, Town Council President

_____

Robert N. Wildrick, Council President Pro Tem

_____

William J. Diamond, Town Council Member

_____

Richard M. Kleid, Town Council Member

_____

Michael J. Pucillo, Town Council Member

ATTEST:

_____

Susan A. Owens, Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE 18-2012 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances Relating to Personnel by Rescinding Article III, Resolution of Employee Grievances, in its Entirety; Providing a New Article III for Resolution of Employee Grievances Before the Town's Administrative and Personnel Committee; Providing for the Role of the Committee; Providing for Procedures; Providing for Appeals; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated November 8, 2012, from Peter B. Elwell, Town Manager
- Ordinance No. 18-2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Grievance Resolution Board
Ordinance No. 18-2012

Date: November 8, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Ordinance No. 18-2012 on first reading. Upon second reading and final adoption, this ordinance will eliminate the Grievance Resolution Board (GRB).

GENERAL INFORMATION

The purpose of a grievance resolution process is to ensure that employees who believe they are victims of incorrect or excessive disciplinary decisions can present "their side of the story" and have those decisions reviewed. As you know, the Town currently offers a redundant grievance resolution process. Employees who are grieving suspensions, demotions, or terminations can appeal either to the GRB or to the Town Council's Administration and Personnel Committee. For the reasons set forth below, continued operation of the GRB is not in the best interests of the Town or its employees.

Because the Town Manager serves as the chair of the GRB (always serving alongside one supervisory employee and one "peer representative"), I must avoid communicating about the substance of disciplinary matters with department directors and the Human Resources Department. This maintains my objectivity as a hearing officer, but it is problematic for me to be excluded from communicating with my direct reports while they are making some of the most difficult and important decisions required by their positions. It would be better for the Town, and I believe also better for employees who are subject to disciplinary action, if I could review with department directors their decisions regarding suspensions, demotions, and terminations before those decisions are finalized and announced to the affected employees.

Another concern is repeated allegations in recent years that employees cannot receive a fair hearing in the GRB setting. These allegations have included suggestions that I cannot be objective in hearing these matters (due to my role as supervisor of the department directors and as the Town's top administrative official) and that employee members of the GRB cannot be objective (due to their particular roles, responsibilities, or experiences as Town employees). I believe the GRB has provided full, fair hearings and objective decisions to grieving employees,

but employees' perceptions of the GRB have sometimes been quite negative. Those perceptions, and verified instances of employee members of the GRB being subjected to other employees' attempts to influence their opinions and actions, has diminished the real and perceived value of the GRB.

Currently, GRB decisions may be appealed to Town Council's Administrative and Personnel Committee, which makes recommendations for action by the full Town Council. If the GRB were eliminated, grievants would proceed directly to the Administrative and Personnel Committee. They would still be afforded due process in the full, fair, public review of their grievances. But the Town's overall grievance resolution process would be more efficient and the problems described above would be solved.

TOWN ATTORNEY REVIEW

The Town Attorney prepared Ordinance No. 18-2012. We also have conferred with the Town's labor counsel regarding this matter and he concurs that the Administrative and Personnel Committee alone will provide sufficient procedural and substantive due process in the review of employee grievances.

PBE:ab
Attachment
cc: All Department Directors

n:\town manager\pbe\memos\2012\mtc grievance resolution board.doc

ORDINANCE NO. 18-2012

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE TOWN CODE OF ORDINANCES RELATING TO PERSONNEL BY RESCINDING ARTICLE III, RESOLUTION OF EMPLOYEE GRIEVANCES, IN ITS ENTIRETY; PROVIDING A NEW ARTICLE III FOR RESOLUTION OF EMPLOYEE GRIEVANCES BEFORE THE TOWN'S ADMINISTRATIVE AND PERSONNEL COMMITTEE; PROVIDING FOR THE ROLE OF THE COMMITTEE; PROVIDING FOR PROCEDURES; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Chapter 82 of the Town Code of Ordinances relating to Personnel is hereby amended by rescinding Article III, Resolution of Employee Grievances, in its entirety.

Section 2. Chapter 82 of the Town Code of Ordinances relating to Personnel is hereby amended by incorporating a new Article III, Resolution of Employee Grievances, to read as follows:

"**ARTICLE III.**
RESOLUTION OF EMPLOYEE GRIEVANCES

Sec. 82-206. Statement of Policy.

It is declared that the public policy of the Town and the purpose of this article is to provide implementation of a procedure for review of certain employee grievances while maintaining the orderly and uninterrupted operations and functions of government and management.

Sec. 82-207. Review by Administrative and Personnel Committee.

The Town's Administrative and Personnel Committee shall consider employee grievances properly filed pursuant to policies and procedures provided in the Town's Personnel Manual. The Administrative and Personnel Committee shall hear grievances relating to suspensions, demotions or discharges which have been filed with the Town's Director of Human Resources in accordance with said policies and procedures.

Sec. 82-208. Role of Committee.

The role of the Administrative and Personnel Committee in regard to hearing employee grievances is to (1) determine whether the facts elicited at the hearing support the determination made by the employee's department head and/or Town Manager; and (2) either sustain the decision of the department head and/or Town Manager, overturn such decision, or recommend less severe discipline if requested to do so by the grievant, and if it is determined, on the basis of all the facts, that the discipline imposed is unreasonable. In no event shall the Administrative and Personnel Committee recommend nor shall the Council impose discipline more severe than the discipline imposed by the department head and/or Town Manager.

Sec. 82-209. Procedures.

1. *Rights of Administrative and Personnel Committee*. Hearings before the Administrative and Personnel Committee will involve hearing testimony of witnesses and considering documentary evidence submitted at the hearing. The Administrative and Personnel Committee shall establish reasonable parameters relating to the length of time allowed for the presentation of a case and instruct the parties involved in regard to the order of the hearing, requirements of the parties relating thereto and any other rules, regulations and procedures relating to the hearing.

2. *Preliminary Hearing*. Prior to hearing the grievant's appeal, the Administrative and Personnel Committee shall schedule a preliminary hearing to be attended by the grievant and department head and/or Town Manager and their representatives, if any, at which preliminary hearing the parameters of the final hearing shall be established including, but not limited to, the length of the hearing, time constraints for presentation of witnesses, requirements relating to disclosure of witnesses and exhibits, and any briefing schedule which may be applicable. The preliminary hearing shall be scheduled at least ten days in advance of the final hearing. At least fifteen days prior to the preliminary hearing, the grievant

and department head and/or Town Manager shall provide the Administrative and Personnel Committee, by filing with the Human Resources Director, a summary of the case, a list of witnesses and exhibits and an estimate of the length of time needed for presentation of their case. It shall be the responsibility of the parties involved in the hearing to exchange statements of the case, witness and exhibit lists and documents each intends to present at the hearing at the time such information is presented for delivery to the Administrative and Personnel Committee. Witnesses and exhibits not revealed fifteen days prior to the hearing shall not be considered by the Administrative and Personnel Committee unless said witnesses and exhibits are in the form of rebuttal testimony or for good cause shown.

3. *Witness Subpoenas*. The Administrative and Personnel Committee shall have the authority, by subpoena, to compel the attendance of witnesses and exhibits for purposes of examination and investigation before the committee.

Sec. 82-210. Findings of Committee.

Subsequent to the presentation of arguments, testimony and documentary evidence of the parties, the Administrative and Personnel Committee shall, in open session, discuss the case, and shall make findings of fact and conclusions of law. These findings of fact and conclusions of law shall be incorporated in a written order. The Administrative and Personnel Committee shall thereafter submit to the Town Council at the next regularly scheduled monthly meeting its findings and recommendations pertaining to the grievance. Thereafter, the Town Council shall make a determination and its decision shall be final. The Town Council shall not conduct an additional hearing, its responsibility being only to consider the recommendations and report of the Administrative and Personnel Committee and make a final determination regarding the applicable grievance at an open public meeting.

Sec. 82-211. Appeals.

In the event an aggrieved party wishes to appeal the decision of the Town Council, such review shall be by Petition for Writ of Certiorari to the 15th Judicial Circuit, where the Petition shall be reviewed."

Section 3. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can

be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 4. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 5. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

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 November, 2012, and for second and final reading on this _____ day of _____, 2012.

_____
Gail L. Coniglio, Mayor

_____
David A. Rosow, Town Council President

_____
Robert N. Wildrick, President Pro Tem

_____
William J. Diamond, Town Council Member

_____
Richard M. Kleid, Town Council Member

_____
Michael J. Pucillo, Town Council Member

ATTEST:

_____
Susan A. Owens, MMC, Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work at 314 South County Road Per Letter Dated October 26, 2012, from Robert Brixius, President, Brixius Construction Services, Inc.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page Dated November 1, 2012
- Letter from Robert Brixius dated October 26, 2012

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 15, 2012

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building Department

Re: Waiver of Town Code Section 42-199, Hours for Construction Work
314 South County Road

Date: November 1, 2012

STAFF RECOMMENDATION

Staff recommends that the Town Council approve an extension of the permissible construction hours at 314 South County Road (former Hamburger Heaven) until January 15, 2013. Approval should be conditioned as follows:

- Work hours are from 8:00 am to 8:00 pm with interior quiet work only.
- No work allowed on Sundays or Town of Palm Beach legal holidays.
- All windows shall be screened per Town Ordinance, Section 22-58.
- All deliveries will be made between the hours of 8:00 AM and 10:00 AM.
- No construction related parking will be allowed on South County Road without right of way parking permits.
- No workers shall congregate or loiter on South County Road.
- Any verified complaints from neighbors may revoke extended work hours.
- Submission of an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200 foot radius of the subject property have been notified of this request by mail prior to 5 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

GENERAL INFORMATION

On October 29, 2009 the general contractor, Bill Brixus, presented a letter requesting an extension of working hours at this location. The space in question was formerly the Hamburger Heaven Restaurant. The vacant space is being renovated to house another restaurant to be called "Pickles." The future tenant wishes to complete renovations in order for the newly renovated space to be fully complete and open for the season. Work consists of interior fitting of the space, including wall and ceiling framing, drywall installation, mechanical, electrical, and plumbing removal and

installation. A building permit for this work, which is valued at $250,000, was issued on October 17, 2012. During the period from December 1 through April 30 permissible working hours are 9:00 AM until 5:00 PM Monday through Friday with quiet work allowed to begin at 8:00 AM each work day. This request would extend the work hours until 8:00 PM Monday through Friday and allow work to be performed on Saturday. The applicant is requesting this extension only for quiet, interior work.

Attachment

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Raychel Houston, Code Enforcement Unit

BRIXIUS CONSTRUCTION SERVICES, INC.
4815 Georgia Ave.
West Palm Beach, FL 33405
561-659-5886
bcsinfo@gmail.com

RECEIVED
OCT 29 2012
TOWN OF PALM BEACH
PZB DEPT

October 26, 2012

TO: Palm Beach Planning, Zoning & Building
FROM: Brixius Construction Services, Inc.

To Whom It May Concern:
This letter is to respectfully request a waiver of Section 42-199, to allow for an extension of construction work hours for the project at 314 S. County Rd. to facilitate the grand opening of Pickles Restaurant (formerly Hamburger Heaven) permit # **B-12– 28073.**

The requested waiver is for **quiet work related to interior renovations** inside the building located at 314 S. County Rd. with the following requested schedule outside the permitted hours:

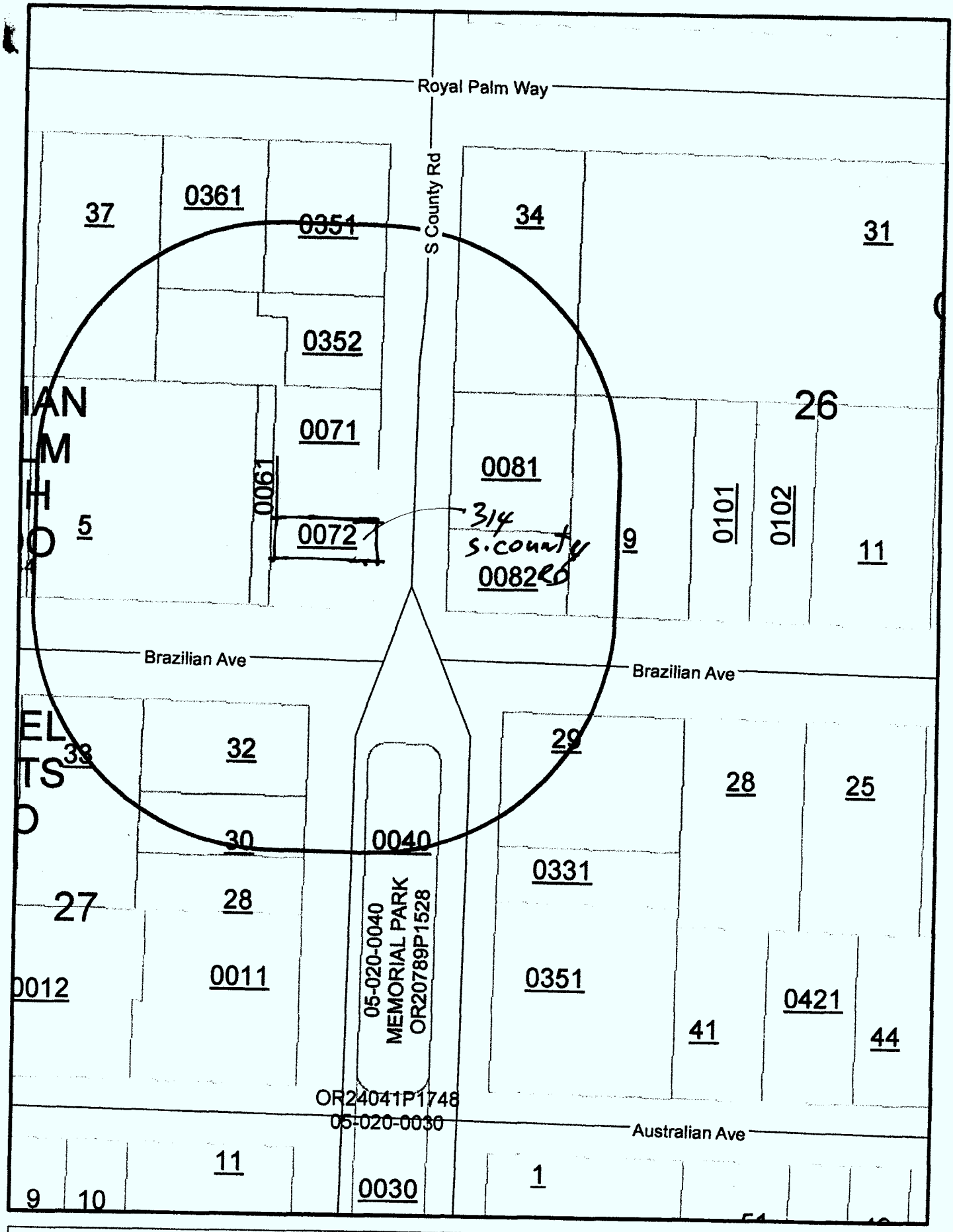
- Monday through Saturday (excluding town holidays)
- 8 am to 8 pm
- Effective immediately through Jan. 15, 2013

This waiver is necessary to complete renovations enabling the restaurant to open by the start of the 2012-13 season.
Construction Schedule: Demo 10-29 to 11-12
Framing and rough in all trades 11-13 to 11-26
Wall in finishes 11-27 to 12-12
Painting trims and Final Inspections 12-14 to 12-29
Final inspection 12-31-2012
Grand Opening 1-1-2013

A site plan is attached.
Please call me directly at any time with questions or concerns.

Sincerely,

Robert Brixius
President
Brixius Construction Services, Inc.



Gary R. Nikolits, CFA
Palm Beach County
Property Appraiser

Location: Downtown Service Center

0 20 40 80 120 160 Feet

Map Scale

Notes:

Prodcued on: 10/26/2012

Key

Selected Parcels 100 300 500

Others 200 400

TOWN OF PALM BEACH

Town Council Meeting on: November 15, 2012

Section of Agenda

New Business - < 15 Minutes

Agenda Title

V**ARIANCE #30-2012** The application of 320 Island Road Trust; relative to property commonly known as **320 Island Road**; described as Lot 1 and Lot 2 and the East 15 feet of Lot 3, ISLAND ROAD DEVELOPMENT ADDITION to the Town of Palm Beach, according to the plat thereof, recorded in Plat Book 18, Page 35 of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting a variance to have a swimming pool 4.25 feet from the mean high waterline in lieu of the 10 foot minimum required. [Attorney: Maura A. Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated October 15, 2012, from Michael J. Gelfand, Gelfand & Arpe, P.A.
- Letter Dated October 25, 2012, from Maura A. Ziska, Kochman & Ziska, PLC

GELFAND & ARPE, P.A.

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MARY C. ARPE

ILISA L. CARLTON
TANIQUE G. LEE

* BOARD CERTIFIED REAL ESTATE LAWYER

BY APPOINTMENT:

COMPSON FINANCIAL CENTER
980 NORTH FEDERAL HIGHWAY
SUITE 434
BOCA RATON, FL

REPLY TO WEST PALM BEACH

October 15, 2012

Maura A. Ziska, Esq.
Kochman & Ziska PLC
222 Lakeview Avenue
Suite 1500
West Palm Beach, FL 33401

Re: Minerof, Arthur
/Reconstruction (330 Island Road [320 Island Road Pool Variance])

Dear ~~Ms. Ziska~~ Maura:

Thank you for arranging for the Overall Site Plan dated September 18, 2012. As anticipated, this firm's clients, the owners of the neighboring parcel to the west have no objection to the Application for Variance. Your arrangements for the swift transmittal of the plan was of great assistance, allowing the quick confirmation of no objection.

Mr. Minerof wishes your clients clear weather, no delays, and few headaches!

Very truly yours,

Michael J. Gelfand
For the Firm

MJG/sg
cc: Mr. Arthur Minerof (email)

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KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Marvin S. Rosen, *Counsel*•

*Also admitted in New York
•Also admitted in Michigan

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960
Facsimile: (561) 802-8995

TOWN OF PALM BEACH
OCT 29 2012
Town Manager's Office

VIA FACSIMILE: 561-838-5411

October 25, 2012

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Variance # 30-2012 – 320 Island Road, Palm Beach, Florida

Dear Mayor and Town Council:

Please **defer** the above referenced matter from the **November 15, 2012** Town Council agenda to the **January 9, 2013** Town Council agenda. The reason for the deferral is to modify the variance application to include a second variance request for the height of a section of the wall proposed for the front yard. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

Maura A. Ziska

/maz
cc: Paul Castro
Keith Williams
client